# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~141~~ 141.

EAST CENTRAL EUREKA MINING COMPANY, JAMES TOMAN, AND ELIZA A. TOMAN, PLAINTIFFS IN ERROR,

*vs.*

CENTRAL EUREKA MINING COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED OCTOBER 31, 1905.

(19,949.)

(19,949.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1905.

## No. 447.

EAST CENTRAL EUREKA MINING COMPANY, JAMES TOMAN, AND ELIZA A. TOMAN, PLAINTIFFS IN ERROR,

*vs.*

CENTRAL EUREKA MINING COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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1 & 2 In the Supreme Court of the United States.

THE EAST CENTRAL EUREKA MINING COMPANY (a corporation), James Toman and Eliza A. Toman, Plaintiffs in Error,

*vs.*

CENTRAL EUREKA MINING COMPANY, (a corporation), Defendant in Error.

Campbell, Metson & Campbell, attorneys for plaintiffs in error.
Galpin & Bolton, of counsel for said plaintiffs.
Olney & Olney, attorneys for Central Eureka M. Co., defendant in error.
W. J. McGee and C. H. Lindley, of counsel for said defendant.

3 *Writ of Error.*

No. —.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of California, Greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the supreme court of the State of California before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the East Central Eureka Mining Company (a corporation), James Toman and Eliza A. Toman, defendants and plaintiffs in error, and Central Eureka Mining Company (a corporation), plaintiff and defendant in error, wherein was drawn in question the validity of a statute of, and an authority exercised
4 under, the United States, and the decision was against their validity, and wherein was drawn in question the construction of a clause of the Constitution of the United States, or statute thereof, and the decision was against the right, title, privilege or exemption expressly set up or claimed under such clause of said Constitution, statute or commission, a manifest error hath happened, to the great damage of the said East Central Eureka Mining Company, a corporation, James Toman and Eliza A. Toman, plaintiffs in error, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of

the United States, together with this writ, so that you may have the same at Washington on the twenty-seventh day of November
5 next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the third day of October, 1905.

[Seal U. S. Circuit Court, Northern Dist., Cal.]

SOUTHARD HOFFMAN,
*Clerk of the Circuit Court of the United States in and for the Northern District of California.*

Allowed, this 3rd day of October, 1905, by:

W. H. BEATTY,
*Chief Justice of the Supreme Court of California.*

6 Service of the within writ of error and receipt of a copy thereof admitted this 3rd day of October, 1905.

OLNEY & OLNEY,
*Attorneys for Defendant in Error.*

7 I, Frank C. Jordan, hereby certify that a copy of the foregoing writ of error was, on the 3 day of October, 1905, lodged in the clerk's office of the said supreme court of the State of California, for said plaintiffs in error.

[Seal Supreme Court of California.]

FRANK C. JORDAN,
*Clerk of the Supreme Court of the State of California,*
By G. H. S. DRYDEN,
*Deputy Clerk of the Supreme Court.*

8 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Central Eureka Mining Company, a corporation, and to Messrs. Olney & Olney, its attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be held in the city of Washington, District of Columbia, United States of America, within sixty (60) days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein the East Central Eureka Mining Company, James Toman

and Eliza A. Toman are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and why speedy
9 justice should not be done to the parties in that behalf.

Witness, the Honorable W. H. Beatty chief justice of the supreme court of the State of California, the 3rd day of October, 1905.

W. H. BEATTY,
*Chief Justice.*

Service of the within citation and receipt of a copy thereof admitted this 3rd day of October, 1905.

OLNEY & OLNEY,
*Attorneys for Defendant in Error.*

10 Sac. No. 1095.

In the Supreme Court of the State of California.

CENTRAL EUREKA MINING COMPANY (a Corporation), Respondent,
*vs.*
THE EAST CENTRAL EUREKA MINING COMPANY (a Corporation) *et al.*, Appellants.

Transcript on Appeal from Judgment and Order of Superior Court of County of Amador. Honorable R. C. Rust, Judge.

Campbell, Metson & Campbell, attorneys for James Toman and Eliza A. Toman, appellants.
Galpin & Bolton, of counsel for said appellants.
Olney & Olney, attorneys for Central Eureka M. Co., respondent.
W. J. McGee and C. H. Lindley, of counsel for said respondent.

Filed this — day of August, A. D. 1902.

GEO. W. ROOT, *Clerk*,
By —— ——,
*Deputy Clerk.*

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13 In the Supreme Court of the State of California.

*Transcript on Appeal.*

In the Superior Court, County of Amador, State of California.

CENTRAL EUREKA MINING COMPANY (a corporation), Plaintiff,
*vs.*
THE EAST CENTRAL EUREKA MINING COMPANY (a corporation), JamesToman, Eliza A. Toman, John Doe and Richard Roe, Defendants.

*Complaint.*

The plaintiff above named complains of the defendants above named and for cause of action alleges:

That the plaintiff is and since the 25th day of October,
14 1894, has been a corporation duly incorporated under the laws of the State of California.

That the defendant, the East Central Eureka Mining Company, is, and since the 12th day of May, 1900, has been, a corporation duly incorporated under the laws of the State of California.

That the defendants, James Toman and Eliza A. Toman, are husband and wife.

That the true names of the defendants John Doe and Richard Roe are not known to plaintiff, and when ascertained plaintiff prays that the true names of said defendants may be substituted for the names John Doe and Richard Roe, which are fictitious names.

That ever since the 25th day of November, 1873, this plaintiff and its grantors have been the owners in fee and in the actual, exclusive, notorious and adverse possession of that certain mine and mining ground commonly known as the "Summit Quartz Mine," situate in Sutter Creek Mining District, in the County of Amador, State of California, and bounded and described as follows, with magnetic variations 16° 58′ East:

Beginning at a post marked "42" and "48" situate on boundary between the Amador Quartz Mine and the Summit Quartz
15 Mine; thence north 79° 35′ east 4 chains and 68 links to a post marked "42" and "48;" thence south 27° 15′ east 15 chains and 76 links to a post marked "48;" thence south 52° 56′ west 2 chains and 41 links to a post marked "48," from which the corner common to Sections 7, 8, 17 and 18 in Township 6 North of Range 11 East of Mt. Diablo Base and Meridian bears south 67° 49′ west at the distance of 12 chains and 65 links, 8 chains and 83 links to post marked "48" at the southwesterly corner of the claim; thence north 27° 15′ west 19 chains and 90 links to a post marked "42" and "48;" thence north 79° 35′ east 4 chains and 41 links to the place of begin-

ning, containing 15.50 acres, and embracing 1165.56 linear feet of the Summit Quartz Lode or Vein.

That on the 25th day of November, 1873, the United States of America, by its letters patent, granted to one Hall McAllister all said Summit Quartz Mine hereinabove described, with the exclusive right of possession and enjoyment of all the land included within the exterior lines as above described, and of 1165.56 linear feet of the said Summit Quartz Mine, vein, ledge, lode, or deposit, for such length throughout its entire depth, although it enter the land adjoining, and also of all other veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior
16 boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey. Said patent was issued in pursuance of and in conformity with the Revised Statutes of the United States, Title 32, Chapter 6. That the said patent to the said Hall McAllister was issued to him by the United States upon application made by him on the 7th day of February, 1871. Said application of the said Hall McAllister was based upon two locations of the said Summit Quartz Mine, one made on the 26th day of March, 1863, for the northerly 780 feet of said lode, and the other made June 22, 1865, for the remainder of said lode or ledge.

That by mesne conveyances the said Hall McAllister, at the time of his said application for said patent and the issuance to him thereof, had become possessed of all the rights of said original locators in and to said Summit Quartz Mine. By mesne conveyances from the said Hall McAllister this plaintiff acquired all the right, title and interest owned and possessed by the said Hall McAllister at any time in and to said mining property known as the "Summit Quartz Mine." By virtue of said mesne conveyances from the said Hall McAllis-
17 ter this plaintiff, on the 5th day of June, 1896, was, ever since has been, and now is, the owner and in the sole, exclusive and adverse possession of said Summit Quartz Mine, and all the lodes, veins, or ledges having their tops or apices within the vertical planes drawn through the surface boundaries of said mine.

That the defendants are, and for several months last past have been, the owners of a tract of land next adjoining the said Summit Quartz Mine on the east, and being the premises commonly known as the "Toman Ranch." Said defendants' title to said premises known as the "Toman Ranch" is derived from two patents issued by the Government of the United States to the predecessor in interest of the defendants. One patent was issued December 1st, 1876, and the other August 20th, 1878, and both were made under the laws of the United States providing for the sale and disposition of what is known as "agricultural lands." Both said patents contained a limitation upon the estate granted by the United States, giving the right to

"the proprietor of a vein or ledge to extract and remove his ore "therefrom should the same be found to penetrate or intersect the "premises hereby granted."

Attached hereto is a diagram, marked "Exhibit A" and which is hereby referred to and made a part of this complaint, upon
18 which is correctly delineated: 1. The exterior boundaries of said Summit Quartz Mine as patented. 2. The exterior boundaries of the premises belonging to the defendant and marked on said "Exhibit A" as "Toman Ranch." 3. The course of the apex of the Summit vein through said Summit Quartz Mining claim hereinafter referred to. 4. The position of the shaft of the Summit Quartz Mine shown in horizontal projection, and so much of the underground workings extended therefrom as have been surveyed and as are necessary to illustrate and explain the rights of this plaintiff and the unlawful claims made by defendant as hereinafter stated.

That within said "Summit Quartz Mine" is a certain vein, lode and ledge of quartz and rock in place carrying gold and other valuable minerals, which said vein, lode and ledge has its top or apex wholly within the surface lines of said Summit Quartz Mine extended downward vertically and wholly without the boundaries of the said "Toman Ranch." Said vein, lode or ledge traverses said Summit Quartz Mine with a course approximately of north 33° and 67′ west. On its onward course it crosses the line in the foregoing description of the exterior boundaries of said Summit Quartz Mine set forth, having a course north 79° 35′ east, and a length of
19 9.09 chains, and also crosses the line set forth in said description, having a course of south 52° and 56′ west, and a length of 8.83 chains. Said vein, lode, or ledge, on its downward course descends into the earth at an angle approximately of 65° eastwardly and on such downward course passes outside of a plane drawn down vertically through the east side line of said Summit Quartz Mine, and enters the land adjoining, and on said downward course reaches, enters, penetrates, extends into and underlies, the said premises belonging to defendant. Said east side line of said Summit Quartz Mine is the one set forth in the foregoing description of the exterior boundaries of said Summit Quartz Mine as having a course south 27° 15′ east and a length of 15.76 chains.

That ever since the said 22nd day of June, 1865, this plaintiff and its predecessors in title, and grantors, have been, and plaintiff is now, in the exclusive, open, notorious and adverse possession of all said Summit Quartz Mine, including the vein or lode above described, throughout its entire depth to the extent of 1165.56 linear feet longitudinally along its course, with the right to follow the said vein, lode or ledge in its descent or downward course to any depth in the direction of the dip or downward course of said vein, lode or ledge, and since the issuance of said patent on the 25th
20 day of November, 1873, this plaintiff and its grantors have

been the owners in the fee of said Summit Quartz Mine, including said vein, lode or ledge.

That the defendants in this action have no right, title or interest in, or claim to, any part or portion of said vein, lode or ledge hereinbefore described, or of any vein, lode or ledge which has its top or apex within said Summit Quartz Mine, and which in its downward course enters, extends to, penetrates, or underlies the premises known as the "Toman Ranch" and belonging to defendants.

That long prior to the acquisition of title from the United States by the defendants and their grantors to the lands and premises known as the "Toman Ranch," the title to said veins, lodes and ledges having apices in the said Summit Quartz Mine and extending into and underlying the surface of said premises known as the "Toman Ranch," had been and was severed from the title to said surface and had been granted and conveyed by the United States, as aforesaid, to the grantors of this plaintiff under and in pursuance of the laws of the United States regulating the sale and disposal of mineral lands of the public domain. That such ownership, possession, or right of possession as said defendants may have, or their grantors may have had, in and to the premises known as the
21 "Toman Ranch," and to each and every portion thereof, are, and at all times were, subject to the rights and interests of this plaintiff in and to said veins, lodes and ledges as in this complaint set forth.

That within said Summit Quartz Mine, and upon the said ledge having its top or apex therein, to-wit: said Summit Ledge or Vein, plaintiff has sunk an incline shaft, and extended the same to the present depth of 1800 feet, or thereabouts, and underneath the exterior boundaries of the said Toman Ranch, and by means of said shaft, and of drifts, levels, and stopes extended therefrom, has heretofore been and now is engaged in extracting and removing from said ledge hereinabove described, and having its top or apex within said Summit Quartz Mine as above set out, the ore and the mineral bearing rock in place therein. That all the ore, mineral deposits, lodes or ledges heretofore or now cut, exposed, opened, worked or appropriated by any of said underground works of plaintiff, or by plaintiff in the course of such working and mining underneath the premises described as the "Toman Ranch," are parts of such ledge having its top or apex wholly within the boundaries of said Summit Quartz Mine, and were and are the properties of this plaintiff; and neither the defendants, nor anyone else from whom they
22 claim title, ever owned or held any interest therein whatever.

That said ledge or vein, having its top or apex, as aforesaid, within the boundaries of the Summit Quartz Mine, contains mineralized ore of great value, and the sole business of this plaintiff is the working of said vein and extracting therefrom the gold and other valuable minerals therein contained.

That the defendants herein claim, by reason of their ownership

of the said "Toman Ranch," to be the owners of all said vein, lode or ledge east of a vertical plane extending downward from the surface boundary line of the said Summit Quartz Mine and of the said land of the defendants, and give out and declare that they are entitled to all of the ore extracted from said mine within the boundaries of the said "Toman Ranch," and deny the right of this plaintiff to extract the ore from said lode or ledge. That said claims of defendants have worked great damage to this plaintiff and have depreciated the market value of said mine. That the said defendants assert that James Toman and Eliza A Toman have assigned to the defendant The East Central Eureka Mining Company, all rights of action possessed by the said Tomans for and on account of the ores extracted by this plaintiff from said lode or ledge within the
23 exterior boundaries of the said Toman Ranch, and the said The East Central Eureka Mining Company has brought an action to recover from this plaintiff the sum of $165,000, the alleged value of said ore extracted by this plaintiff from the said ledge within the exterior boundaries of said Toman Ranch, and defendants threaten, and will, as plaintiff is informed and believes, from time to time bring other actions against this plaintiff for the value of ores extracted from said ledge subsequent to the bringing of said suit by The East Central Eureka Mining Company as aforesaid.

That it is the intention of defendants, as plaintiff is informed and believes, to continually set up claims to said vein, lode or ledge, and from time to time to bring suits to enforce the same, and harrass and annoy this plaintiff and its stockholders, and by so doing compel this plaintiff to buy its peace by paying to the defendants a large sum of money.

That this plaintiff cannot obtain adequate or sufficient relief for the injuries inflicted and threatened by the defendants in any other way than by the judgment of a court of equity enjoining the defendants from setting up any right, title or interest in or to said vein, lode or ledge, or any part thereof.

Wherefore plaintiff prays judgment that it be adjudged and decreed that the defendants have not, nor has any or either of
24 them, any right, title, interest or claim in or to any portion of any vein, lode or ledge having its apex within the surface lines of the Summit Quartz Mine and extended downward into the "Toman Ranch" and underneath the surface thereof. That the defendants by the judgment of this Court be forever enjoined and debarred from asserting any claim to said vein, lode or ledge in this complaint specifically described, and now being worked by this plaintiff, in any part of its downward course, and forbidden and enjoined from interfering with this plaintiff in extracting the ore in said vein, lode or ledge, so long as the same is done in a workmanlike, careful and proper manner and without unnecessary injury to the adjoining territory, and be enjoined and forbidden to assert any claim to the ore extracted from said vein, lode or ledge, or from asserting any claim to the proceeds of any ore taken from said vein, lode or ledge.

And plaintiff prays that it may have such other, further or different relief as it is entitled to in equity, and its costs of suit.

OLNEY & OLNEY,
*Attorneys for Plaintiff.*
W. J. McGEE,
*Of Counsel.*

(Duly verified.)

[Endorsed:] Filed April 8, 1901. C. L. Culbert, clerk.

(Here follows diagram marked p. 25.)

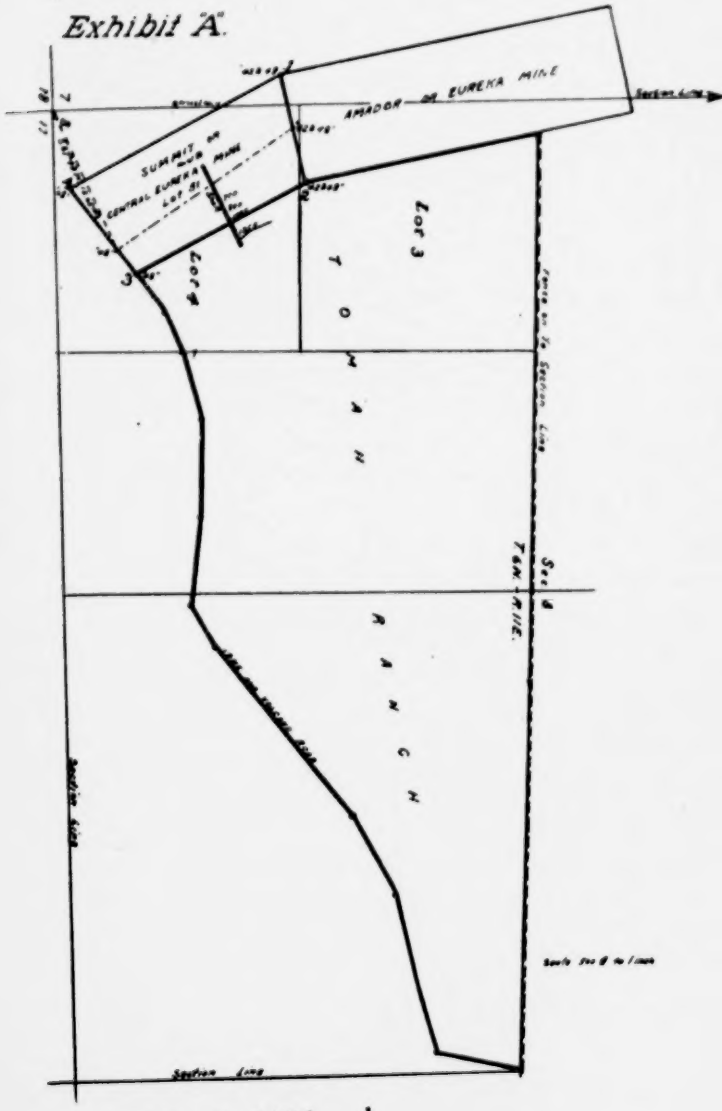


Exhibit "A"
AMADOR OR EUREKA MINE
SUMMIT OR CENTRAL EUREKA MINE
LOT 3
LOT 4
TOWNSHIP
RANGE
Section Line
Section Line
Section Line

26 & 27 [Title of Court and Cause.]

*Demurrer of James and Eliza A. Toman.*

Come now James Toman and Eliza A. Toman, defendants above named, and demur to the complaint of plaintiff above named now on file in the above entitled action, and as grounds of demurrer aver:

That said complaint does not state facts sufficient to constitute a cause of action against said defendants.

Wherefore, said defendants pray to be hence dismissed with judgment for their costs.

CAMPBELL, METSON & CAMPBELL,
*Attorneys for Defendants James Toman and Eliza A. Toman.*

[Endorsed:] Due service of within demurrer admitted this 24 day of May, 1901. Olney & Olney, attorneys for —. Filed June 1st, 1901. C. L. Culbert, clerk.

28 [Title of Court and Cause.]

*Order Overruling Demurrer.*

The demurrer of the defendant, East Central Eureka Mining Company, a corporation, and the demurrer of the defendants James Toman and Eliza A. Toman to the plaintiff's complaint on file in the above entitled action having been heretofore argued upon briefs and submitted to the Court for decision, and the Court having carefully considered the same and being fully advised in the premises:

It is ordered that the said demurrers be and each of them are hereby overruled;

It is further ordered that the said defendants and each of them are hereby given fifteen days to file their respective answers herein.

R. C. RUST, *Judge.*

[Endorsed:] Filed July 10, 1901. C. L. Culbert, clerk.

[Title of Court and Cause.]

*Amended Answer of James Toman and Eliza A. Toman.*

29 The defendants James Toman and Eliza A Toman, by leave of court first had and obtained, file this, their amended answer to the complaint of plaintiff:

Admit that on the 25th day of November, 1873, the United States

of America, by its letters patent, granted to one Hall McAllister all the Summit Quartz Mine described in the complaint, with the exclusive right of possession and enjoyment of all the land included within the exterior lines thereof, as in the complaint described, and of 1165.56 lineal feet of the said Summit Quartz Mine, together with the veins, ledges, lodes or deposits throughout their entire depth within the said exterior lines of the said Summit Quartz Mine. But these defendants deny that the United States by the said letters patent, or any letters patent, or in any manner whatsoever, granted to the said Hall McAllister the exclusive or any right of possession or enjoyment of any vein, lode, ledge or deposit beyond the said exterior lines of the said Summit Quartz Mine, or that the said letters patent or any letters patent granted to the said Hall McAllister the right to enter into the lands adjoining the said Summit Quartz Mine in any manner whatsoever.

Admit that by the said letters patent set forth in the complaint the United States of America did grant to the said Hall McAllister all the veins, lodes, ledges or deposits throughout their entire depth,
30 the tops or apices of which lie inside of the exterior boundary lines of the said survey described in the complaint at the surface extended downward vertically within the said exterior boundary lines of the said Summit Quartz Mine. But these defendants deny that by the said letters patent or any letters patent the United States of America granted the right to the said Hall McAllister to follow the said veins, lodes, ledges or deposits in their downward course when they so far departed from a perpendicular course as to extend outside the vertical side lines of the said survey, or the said exterior lines of the said Summit Quartz Mine.

Deny that the said patent to the said Hall McAllister was issued to him by the United States upon the application made by him on the 7th day of February, 1871, or upon any other day prior to the — day of October, 1872.

Deny that the said or any application of the said Hall McAllister was based upon two locations, or any locations of the said Summit Quartz Mine, or upon one made upon the 26th day of March, 1863, or at any other date for the northerly 780 feet of the said lode, or any other number of feet of said lode, or upon another location made June 22nd, 1865, or at any other date for the remainder of the said lode or ledge, or any part thereof.

31 Deny that by mesne conveyances, or any conveyances, the said Hall McAllister at the time of his said application for his said patent, or at any other time before the issuance to him of the said patent, had become possessed of all the rights, or any of the rights of the original locators in and to the said Summit Quartz Mine. But these defendants admit that at the time of the issuance of the said patent to the said Hall McAllister, the said Hall McAllister had become possessed of all the rights of every person whatsoever in and to the mining ground described within the said exterior boundaries of the said Summit Quartz Mine; and allege that the

said Hall McAllister was not then, nor did he ever have any rights in or to any of the surrounding lands or the right to pursue any vein, ledge or vein of ore beyond the said exterior boundaries of the said Summit Quartz Mine.

Deny that by virtue of mesne conveyances, or any conveyances, from the said Hall McAllister, or from any conveyance whatsoever the plaintiff on the 5th day of June, 1896, was or ever since has been, or now is, or ever was the owner or in the sole or exclusive or adverse possession of all or any of the lodes, veins or ledges having their tops or apices within the vertical plane drawn through the surface boundaries of the said mine beyond the said exterior boundaries
32 of the same.

Deny that any vein, lode or ledge having its top or apex wholly within the said exterior boundaries of the said Summit Quartz Mine extends downward in its course beyond the easterly side line of the said Summit Quartz Mine or into the premises, or that it underlies the premises belonging to these defendants, or either of them.

Deny that ever since the 22nd day of June, 1865, or since any other date or time the plaintiff or its predecessors in title, or grantors, have been, or that plaintiff is now, or ever was, in the exclusive, or open, or notorious, or adverse possession of all or any vein or lode described in the complaint, throughout its entire depth, or with the right to follow the said vein or lode or ledge in its descent or downward course to any depth in the direction of the dip or downward course of the said vein or lode or ledge. And deny that since the issuance of the said patent on the 25th day of November, 1873, the plaintiff or its grantors have been, or that the plaintiff is now the owner in fee of any vein, or lode or ledge under or beneath the surface of the lands and premises described in the complaint as the Toman Ranch.

Deny that the defendants have no right or title or interest in or claim to any portion of the veins, lodes or ledges described in
33 the complaint, or of any vein or lode or ledge which has its top or apex within the said Summit Quartz Mine, which in its downward course enters or extends to or penetrates or underlies the premises known as the Toman Ranch and belonging to these defendants. But allege that the defendants are the owners and entitled to the possession of all veins, lodes and ledges beneath the surface of the lands and premises described in the complaint as the Toman Ranch.

Deny that at any time or at all the title to the veins, lodes or ledges, or any of them having apices in the said Summit Quartz Mine and extending into or underlying the surface of the said Toman Ranch had been or was severed from the title to the surface of said Toman Ranch, or had been granted or conveyed by the United States as in the complaint alleged or at all to the grantors of the plaintiff under or in pursuance of the laws of the United States regulating the sale

or disposal of the mineral lands of the public domain, or in any manner whatsoever.

Deny that any ownership or possession or right of possession of the defendants, or either of them, or of their grantors, in or to the premises known as the Toman Ranch, or to any portion thereof is or at any time was subject to the rights or interests of the plain-
34 tiff in or to the veins or lodes or ledges as in the complaint set forth, or in any manner whatsoever.

Deny that the parts or portions of ledges underneath the said Toman Ranch have their tops or apices wholly or at all within the said exterior boundaries of the said Summit Quartz Mine alleged and set forth in plaintiff's complaint.

Deny that any lodes or ledges beyond the said exterior boundary lines of the said Summit Quartz Mine or any part thereof are properties of the plaintiff; and deny that neither the defendants nor anyone else from whom they claim title ever owned or held any interest therein whatsoever; but on the contrary, the defendants allege that they are now and for more than ten years last past have been the owners of all the veins, lodes and ledges described in the complaint, which said lodes or ledges are underneath the surface of and within the exterior boundaries of the said Toman Ranch.

Deny that it is the intention or purpose of the defendants to harass or annoy the plaintiff or its stockholders in any manner whatsoever, or to compel the plaintiff to buy its peace by paying to the defendants a large sum of money; but on the contrary the defendants allege that it is the purpose of the defendants to recover from the plaintiff and the stockholders thereof any and all damages
35 suffered by the defendants by reason of any act of the plaintiff in removing from the land and premises any ore or mineral matter belonging to the defendants.

And for a further and separate defense these defendants allege as follows:

That heretofore, to wit: on the 31st day of December, 1898, the plaintiff executed and delivered to the defendants, Eliza A. Toman and James Toman, for a valuable consideration its certain indenture in writing, wherein and whereby the plaintiff remised, released and forever quitclaimed unto the said Eliza A. Toman and James Toman, their heirs and assigns forever, all its estate, right, title, interest, property, possession, claim and demand whatsoever, both at law and in equity, in and to all the land and premises described in the complaint as the Toman Ranch, which said indenture was in the words and figures following, to-wit:

"This Indenture, Made this 31st day of December, A. D. One Thousand Eight Hundred and Ninety-eight, between the Central Eureka Mining Company, (A Corporation) the party of the first part, and Eliza A. Toman and James Toman, her husband, of the County of Amandor, State of California, the parties of the second part,

"Witnesseth: That the said party of the first part, for
36 and in consideration of the sum of Ten Dollars, gold coin of the United States of America, to it in hand paid by the parties of the second part at or before the ensealing of these presents the receipt whereof is hereby acknowledged, has remised, released, and forever quitclaimed, and by these presents does remise, release and forever quitclaim unto the said parties of the second part, and to their heirs and assigns forever,

"All those certain lots, pieces or parcels of land situate, lying and being in the said County of Amador, State of California, and bounded and particularly described as follows, to-wit:

"First. That portion of Section- Eight (8) and Seventeen (17) Township Six (6) North, Range Eleven (11) East, Mount Diablo Base and Meridian, lying North of the center of that certain wagon road extending between the town of Ione and Volcano, and known as the Ione and Volcano wagon road, and lying East of that certain patented mining ground known as the Summit Quartz Mine, and also East of that certain patented mining ground known as the Amador Consolidated Mine.

"Second. Commencing at the southwest corner of that certain patented claim known as the Summit Quartz Mine, situated in Township Six (6) North Range Eleven (11) East, Mount Diablo
37 Meridian, in the County of Amador, State of California, said Southwest corner being at or near the middle of that certain wagon road known as the Ione and Volcano wagon road, thence running in a Southwesterly direction along the center of said Ione and Volcano wagon road a distance of eight and one-half chains more or less to the intersection of the section line between Sections Seventeen (17) and Eighteen (18) in said township, thence Northerly along said section line extended a distance of eighteen and one-half chains more or less, to its intersection with the western boundary line of said Summit Quartz Mine, thence South along said boundary line, twenty-seven degrees, fifteen minutes East, fifteen chains more or less to the point of beginning; being a fractional portion of Lot Four (4) in S. W. one-quarter of said Section Eight (8) and a fractional portion of the Northwest one-quarter of the N. W. one-quarter of Section Seventeen (17) all of the land above described lying Westerly of said Summit Quartz Mine and Northerly of the middle of said Ione and Volcano Road.

"And does hereby remise and release unto the parties of the second part all claims and obligations, bonds, and contracts, or assignments of either made by Eliza A. Toman or James Toman to the said Central Eureka Mining Company, a corporation,
38 or to any of its predecessors in interest, grantors or assignors, and does specially remise and quitclaim unto the said Eliza A. Toman and James Toman, and does hereby specially release them and each of them of and from any covenant or agreement contained in that certain agreement made and entered into between Eliza A. Toman and James Toman, and the Central Eureka Mining Com-

pany, a corporation, under date of October 23rd, 1897, which said agreement was recorded on this 1st day of December, 1897, in Volume G of Agreement- at page 211 *et seq.*, Amador County Records, State of California.

"Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

"To have and to hold, all and singular, the above mentioned and described premises, together with the appurtances unto the
39 said parties of the second part, their heirs and assigns forever.

"This deed is made pursuant to the authority and resolution of the Board of Directors of party of the first part, which resolution was adopted by said party of the first part at a meeting thereof, held December 31st, 1898.

"In witness whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written.

"THE CENTRAL EUREKA MINING COMPANY,
"By Z. T. GILPIN, *President.*
"By W. A. M. VAN BOKKELEN, *Secretary.*

"Signed, sealed and delivered in the presence of
"J. B. RICHARDSON.
[CORPORATE SEAL.]

"STATE OF CALIFORNIA, *County of Alameda, ss:*

"On the 25th day of March in the year of our Lord one thousand eight hundred and ninety-nine before me, J. B. Richardson, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Z. T. Galpin, known to me to be the President and W. A. M. Van Bokkelen, known to me to be the Secretary of the Corporation that executed the
40 within instrument, and acknowledged to me that such corporation executed the same.

"In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.] J. B. RICHARDSON,
*Notary Public in and for Alameda Co., Cal.*"

That after the said indenture was duly executed by the plaintiff, the said deed or indenture was duly and regularly ratified and assented to by the holders of more than two-thirds of the capital stock of the plaintiff then outstanding.

Wherefore, these defendants pray judgment for their costs.

CAMPBELL, METSON & CAMPBELL,

(Duly verified.)

*Attorneys for Defendants.*

[Endorsed:] Filed October 17th, 1901. C. L. Culbert, clerk. By B. R. Bruse, deputy clerk.

[Title of Court and Cause.]

*Decision of the Court.*

The above entitled action came on regularly for trial in its order on the 14th day of October, 1901, before the Court sitting
41 without a jury, a jury having been waived by the respective parties. Messrs. Olney & Olney appeared as attorneys and Messrs. Curtis H. Lindley and W. J. McGee as counsel for plaintiff. A. E. Bolton, Esq., and Charles W. Slack, Esq., appeared for the defendants. The action was then dismissed as to the defendants John Doe and Richard Roe. Thereupon evidence oral and documentary was offered by the respective parties and received in evidence and the cause submitted to the Court for decision. And the Court having duly considered the evidence and the law and the facts renders its decision as follows:

*Findings of Fact.*

Ever since the 25th day of November, 1873, the plaintiff and its grantors have been the owners in fee and in the actual, exclusive, notorious and adverse possession of that certain mine and mining ground commonly known as the "Summit Quartz Mine," situate in Sutter Creek Mining District, in the County of Amador, State of California, and bounded and described as follows, with magnetic variation 16 degrees and 58′ East:—

Beginning at a post marked "42" and "48" situate on boundary between the Amador Quartz Mine and the Summit Quartz
42 Mine; thence North 79 degrees 35′ East 4 chains and 68 links to a post marked "42" and "48;" thence South 27 degrees 15′ East 15 chains and 76 links to a post marked "48;" thence South 52 degrees 56′ West 2 chains and 41 links to a post marked "48" from which the corner common to Sections 7, 8, 17 and 18 in Township 6 North of Range 11 East of Mt. Diablo Base and Meridian bears South 67 degrees 49′ West at the distance of 12 chains and 65 links, 8 chains and 83 links to post marked "48" at the Southwesterly corner of the claim; thence North 27 degrees 15′ West 19 chains and 90 links to a post marked "42" and "48;" thence North 79 degrees 35′ East 4 chains and 41 links to the place of beginning.

containing 15.50 acres, and embracing 1165.56 linear feet of the Summit Quartz Lode or Vein.

On the 25th day of November, 1873, the United States of America, by its letters patent, granted to one Hall McAllister all said Summit Quartz Mine hereinabove described, with the exclusive right of possession and enjoyment of all the land included within the interior lines as above described, and of 1165.56 linear feet of the Summit Quartz Mine, vein, ledge, lode or deposit, for such length throughout its entire depth, although it enters the land adjoining, and also of all other veins, lodes, ledges or deposits throughout their entire
43 depth the tops or apices of which lie inside the exterior boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges or deposits in their downward course may so far depart from the perpendicular as to extend outside the vertical side lines of said survey, but limiting the right of possession to such outside parts of said veins or ledges within such portions thereof as lie between vertical planes drawn downward through the end lines of above described premises continued in their own direction.

Said patent was issued in pursuance of and in conformity with the Revised Statutes of the United States, Title 32, Chapter 6, and was issued to the said Hall McAllister upon application made by him on the 7th day of February, 1871. The said application of the said Hall McAllister was based upon two locations of the Summit Quartz Mine, one made on the 26th day of March, 1863, for the northerly 780 feet of said lode, vein, or ledge, and the other made June 22nd, 1865, for the remainder of said vein, lode, or ledge.

The said Hall McAllister, by mesne conveyances, had become possessed at the time of said application for said patent and at the time of the issuance of said patent to him, of all the rights of said
44 original locators in and to said Summit Quartz Mine. By mesne conveyances from the said Hall McAllister the plaintiff herein acquired all the right, title and interest owned or possessed by the said Hall McAllister at any time in and to said mining property known as the "Summit Quartz Mine."

The defendants are, and at the time of bringing this suit were, and for some time prior thereto had been, the owners of a tract of land next adjoining the said Summit Quartz Mine on the east, and being the premises commonly known as the "Toman Ranch." The title of the defendants to the premises known as the "Toman Ranch" is derived from two patents issued by the Government of the United States to the predecessors in interest of the defendants. One patent was issued December 1st, 1876, and the other August 20th, 1878, and both were made under the laws of the United States providing for the sale and disposition of what is known as "agricultural lands." Both said patents contained a limitation upon the estate granted by the United States, giving the right to the proprietor "of a vein or ledge to " extract and remove his ore therefrom should the same be found to " penetrate or intersect the premises hereby granted."

Attached hereto is a diagram, marked "Exhibit A," which
45 is hereby referred to and made a part of this decision. Upon this diagram is correctly delineated. 1. The exterior boundaries of said Summit Quartz Mine as patented. 2. The exterior boundaries of the premises belonging to the defendants and marked on said "Exhibit A" as "Toman Ranch." 3. The course of the apex of the Summit vein through said Summit Quartz Mining claim hereinafter referred to. 4. The position of the shaft of the Summit Quartz Mine shown in horizontal projection, and so much of the underground workings extended therefrom as had been at the time of the institution of this suit surveyed, and as are necessary to illustrate and explain the rights of the parties hereto.

Within the said "Summit Quartz Mine" is a certain vein, lode and ledge of quartz and rock in place carrying gold and other valuable minerals, which said vein, lode and ledge has its top or apex wholly within the surface lines of said Summit Quartz Mine extended downward vertically. Said vein, lode or ledge traverses said Summit Quartz Mine with a course approximately of north 33 degrees and 67′ west. In its course it crosses both the northern and southerly end lines of said mining ground above described. On the north it crosses the end line at a point marked on the diagram, "Exhibit A"
46 as "42 and 48," and being the beginning point of the description hereinabove set out. It crosses the southern end line at a point marked on the diagram "Exhibit A" as "48" and being two chains and 41 links from southeast corner of said patented mining ground. Said vein, lode or ledge in its downward course descends into the earth at an angle approximately of 65 degrees eastwardly and on such downward course passes outside of a plane drawn down vertically through the east side line of said Summit Quartz Mine, and enters the land adjoining at a depth of 1094 feet from the collar of the shaft. On said downward course, and at said depth, it reaches, enters, penetrates, and extends into and underlies the premises known as the "Toman Ranch"

Ever since the said 22nd day of June, 1865, the plaintiff and its predecessors in title, and grantors, have been, and plaintiff was at the beginning of this suit, and now is, in the exclusive, open, notorious and adverse possession of all said Summit Quartz Mine, including the vein, lode or ledge above described, throughout its entire depth to the extent of 1165.56 linear feet longitudinally along its course, with the right to follow the said vein, lode or ledge in its descent or downward course to any depth in the direction of the dip or downward course of said vein, lode or ledge, and since the issuance of said pat-
47 ent on the 25th day of November, 1873, this plaintiff and its grantors have been the owners in fee of said Summit Quartz Mine, including said vein, lode or ledge.

That the defendants in this action have no right, title or interest in, or claim to, any part or portion of said vein, lode or ledge hereinbefore described, or of any vein or lode or ledge which has its top or apex within said Summit Quartz Mine, and which in its downward

course enters, extends into, penetrates, or underlies the premises known as the "Toman Ranch" and described in the complaint herein.

Prior to the acquisition of title from the United States by the defendants and their grantors to the land and premises known as the "Toman Ranch" the title to said veins, lodes and ledges having apices in the said Summit Quartz Mine and extending into and underlying the surface of said premises known as the "Toman Ranch," had been and was severed from the title to said surface and had been granted and conveyed by the United States as aforesaid to the grantors of plaintiff under and in pursuance of the laws of the United States regulating the sale and disposal of mineral lands of the public domain. The ownership, possession, or right of possession, of defendants and their grantors, in and to the premises
48 known as the "Toman Ranch" and to each and every portion thereof, are and at all times were subject to the rights and interests of this plaintiff in and to said veins, lodes or ledges hereinbefore described.

Within said Summit Quartz Mine and upon the said ledge having its top or apex therein, to-wit: said Summit ledge, lode or vein, the plaintiff has sunk an incline shaft and extended the same to the depth at the present time of two thousand feet or thereabouts, and underneath the exterior boundaries of the said "Toman Ranch," and by means of said shaft and of drifts, levels and stopes extended therefrom has heretofore been, and at the time of the commencement of this action was, and now is, engaged in extracting and removing from said ledge hereinabove described and having its top or apex within said Summit Quartz Mine, as above set forth, the ore and the mineral bearing rock in place therein. All the ore, mineral deposits, lodes, veins or ledges heretofore or now cut, exposed, open, worked or appropriated by means of said underground works of plaintiff, or by plaintiff in the course of such working and mining underneath the premises described as the "Toman Ranch," are parts of such ledge having its top or apex wholly within the boundaries of said Summit Quartz Mine and within the end lines of said
49 mine projected in their own direction, and were and are the properties of the plaintiff, and neither the defendants, nor anyone else from whom they claim title, ever owned or held any interest therein whatsoever. Said lode, ledge or vein, having its top or apex as aforesaid within the boundaries of the Summit Quartz Mine, contains mineralized ore of great value and the sole business of said plaintiff is the working of said vein and extracting therefrom the gold and other valuable minerals therein contained.

The deed dated December 31st, 1898, and set out in *haec verba* in the respective answers of the defendants herein, does not include any portion of the said mines described in the Letters Patent from the United States to Hall McAllister hereinabove referred to, nor does it include any vein, lode or ledge having its apex within the

exterior boundaries of the said mines as described in said patent and hereinbefore described.

All the denials contained in said answers of the defendants, and each of them, are untrue.

*Conclusions of Law.*

From the foregoing facts the plaintiff is entitled to judgment in accordance with the prayer of its complaint. Let a judgment and decree be entered accordingly in favor of plaintiff in ac-
50 cordance with the prayer of its complaint, and for costs of suit.

Dated November 6th, 1901.

R. C. RUST,
*Judge of the Superior Court.*

[Endorsed:] Filed Nov. 6, 1901. C. L. Culbert, clerk.

[Title of Court and Cause.]

*Judgment.*

This cause came on regularly for trial on the 14th day of October, 1901, Olney & Olney appearing as attorneys for the plaintiff and Curtis H. Lindley and W. J. McGee as its counsel. Judge Charles W. Slack and A. E. Bolton, Esq., appeared for the defendants. A trial by jury having been expressly waived by the respective parties the cause was tried before the Court without a jury. Whereupon witnesses on the part of plaintiff and defendants were duly sworn and examined and documentary evidence introduced by the respective parties, and the evidence being closed the case was submitted to the Court for consideration and decision, and after due consideration thereon the Court files its findings and decision in writing
51 and orders that judgment be entered herein in favor of the plaintiff in accordance with the prayer of its complaint.

Wherefore, by reason of the law and the decision aforesaid, it is ordered, adjudged and decreed that the plaintiff is, and at the beginning of this action was, the owner and in the possession of that certain mine and mining ground commonly known as the "Summit Quartz Mine," situate in Sutter Creek Mining District, in the County of Amador, State of California, and described as follows, with magnetic variations 16 degrees and 58′ East.

Beginning at a post marked "42" and "48" situate on boundary between the Amador Quartz Mine and the Summit Quartz Mine; thence north 79 degrees 35′ east 4 chains and 68 links to a post marked "42" and "48"; thence south 27 degrees and 15′ east 15 chains and 76 links to a post marked "48"; thence south 52 degrees

56′ west 2 chains and 41 links to a post marked "48" from which the corner common to Sections 7, 8, 17 and 18 in Township 6 North of Range 11 East of Mt. Diablo Base and Meridian bears south 67 degrees 49′ west at the distance of 12 chains and 65 links, 8 chains and 83 links to a post marked "48" at the southwesterly corner of the claim; thence north 27 degrees 15′ west 19 chains and 90 links to a post marked "42" and "48"; thence north 79 degrees 35′
52 east 4 chains and 41 links to the place of beginning, containing 15.50 acres, and embracing 1165.56 linear feet of the Summit Quartz Lode or Vein; together with all veins, lodes and ledges having their apex or apices within the exterior boundaries of said land above described and within the end lines of said premises as above described projected in their own direction through such veins, lodes and ledges in their downward course enter into the land and premises known as the "Toman Ranch" and described and referred to in the complaint herein.

It is further ordered, adjudged and decreed that the defendants have not, nor has any or either of them, any right, title, interest or claim in or to any portion of any vein, lode or ledge having its apex within the surface lines of the Summit Quartz Mine hereinabove described and extending downward into the said "Toman Ranch" and underneath the surface thereof.

It is further ordered, adjudged and decreed that the defendants and each of them, and all persons claiming by, through, or under them, be and they are hereby forever forbid, enjoined and debarred from asserting any claim or interest in any vein, lode or ledge now being worked by the plaintiff and described in the complaint and in the decision herein, in any part of its downward course
53 within the end lines of said mine projected in their own direction, and they and each of them are forbidden and enjoined from interfering with the plaintiff, its servants, agents and employees, in extracting the ore in any of said veins, lodes or ledges so long as the same is done in a workmanlike, careful and proper manner and without unnecessary injury to the adjoining territory; and they are likewise hereby enjoined and forbidden to assert any claim to the ore extracted from any of said veins, lodes or ledges or from asserting any claim to the proceeds of any ore taken from any of said veins, lodes or ledges.

It is further ordered, adjudged and decreed that the plaintiff have and recover its costs against the defendants taxed at the sum of $—

Done in open Court this 6th day of November, 1901.

R. C. RUST,
*Judge of the Superior Court.*

[Endorsed:] Filed Nov. 6th, 1901. C. L. Culbert, clerk.

Judgment recorded —— —, 1901, in Vol. 3 of Judgments, page 401.

54 [Title of Court and Cause.]

*Bill of Exceptions.*

Be it Remembered, that the above entitled cause came on for trial on October 14th, 1901; the following proceedings were had and evidence introduced:

Mr. OLNEY: The action is in the nature of an action to quiet title, by setting up the facts involved in the contest as between the two parties. The complainant alleges that the plaintiff is in possession and the owner of a certain mining claim near Sutter Creek in this County, and that the defendant makes certain claims, setting them out, in regard to that property. The Central Eureka Mining Company, it is alleged, and so far as the surface ground is concerned, it is not denied, is the owner and in the possession of this mining claim, commonly known as the "Summit Quartz Mine" and delineated on the map. (Referring to plaintiff's exhibit No. 3.) The line to which I point towards the bottom is the east line of the mine. The plaintiff alleges, and it is admitted by the answer, that the defendants, Toman and wife, are the owners of the ranch adjoining on the east.

It is admitted by the pleadings that the Summit Quartz Mine was conveyed by the United States letters patent to Hall McAllis-
55 ter on the 25th day of November, 1873; that McAllister's patent was issued upon locations made, one in 1863, for a portion, and another location made in 1866, for the balance of the ledge. It is admitted that the plaintiffs deraign title from Hall McAllister to this mining property.

When the patent is introduced in evidence, your Honor will see, as you see from the map (referring to plaintiff's exhibit No. 3) that the end lines are not parallel, and it is contended by the defendant that for that reason the plaintiff has no extra lateral right. The plaintiff in this action, following, as it claims, its vein or ledge in its downward course, crosses its east line about 1100 feet down, and for some two or three years last past, and at the present time, it is working under the defendants' surface lines of the Toman Ranch and inside of its boundaries. Plaintiff alleges that the Toman Ranch was patented long subsequent to the issuance of the patent to Hall McAllister as agricultural lands, and that the rights conveyed by our patent are prior to and ante-date those of the Toman patent, and that plaintiff's patent gives it the right to go in under the Toman land.

The second question, is the vein or lode a continuous vein, and does the plaintiff have the right to follow it?

The third proposition involved is: All the defendants set
56 up that on the 31st day of December, 1898, the plaintiff in this action made a quitclaim deed to James Toman and Eliza A. Toman, by which it remised and released to the Tomans all the land lying east of that certain patented mining claim known as the

Summit Mine, and the defendants claim, as we understand it, that under that deed plaintiff conveyed the ledge and mineral matter that had been conveyed to Hall McAllister by the United States patent, and that the plaintiff had no right since the execution of that deed, to go beyond the eastern side line.

As to whether this vein, lode or ledge, is continuous, having its apex within the surface boundaries of the Summit Mine, is purely a question of fact. The other two questions are questions of law, or possibly, mixed questions of law and fact. That this patented ground has no parallel end lines, whether we still have the right to follow the vein or lode into adjoining ground; and second, whether this quit-claim deed, conveying the interest of the plaintiff in any land east of its mining claim, conveys any interest in the mine itself.

57 Plaintiff then read in evidence the patent to Hall McAllister, in the words and figures following, to-wit:

General Land Office No. 691.

Mineral Certificate No. —.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, in pursuance of the act of Congress, approved July twenty-six, eighteen hundred and sixty-six, entitled, "An Act granting the right of way to ditch and canal owners over the public lands, and for other purposes;" the act amendatory thereof, approved July ninth, eighteen hundred and seventy; and the act approved May 10th, eighteen hundred and seventy-two, entitled "An Act to promote the development of the mining resources of the United States," there have been deposited in the General Land Office of the United States the Plat and Field Notes of survey of the claim of Hall McAllister upon the Summit Quartz Mine, accompanied by the Certificate of the Register of the Land Office at Sacramento, in the State of California, whereby it appears that in pursuance of said acts of Congress Hall McAllister did, on the eleventh day of October, A. D.,

58 1872, enter and pay for said mining claim or premises, being Mineral Entry No. 118, in the series of said Office, designated by the Surveyor General as Lot No. 51 embracing a portion of the south half of Sections seven (7) and eight (8) in Township six (6) north of Range eleven (11) East Mount Diablo Meridian, in the Sutter Creek Mining District in the County of Amador and State of California, in the District of Lands subject to sale at Sacramento, embracing fifteen (15) acres and fifty-one hundredths (51/100) of an acre of land more or less, and according to the returns on file in the General Land Office, bounded, described, and platted as follows, with magnetic variation at sixteen (16) degrees fifty-eight (58) minutes east, to wit:

Beginning at Post marked "42 and 48," situate on boundary between the Amador Quartz Mine and the Summit Quartz Mine; thence

T. 6 N. R. 11 E.
Mount Diablo Meridian
Lot 37-81.
Sec 7.
Sec 8
Sec 18.
Sec 17
Point 4-0
Point 4-0
Point 4-0

north seventy-nine (79) degrees thirty-five (35) minutes east four (4) chains and sixty-eight (68) links to post marked "42 and 48;" thence south twenty-seven (27) degrees fifteen (15) minutes east, fifteen (15) chains and seventy-six (76) links, to post marked "48;" thence south fifty-two (52) degrees fifty-six (56) minutes west two (2) chains and forty-one (41) links to post marked "48" from which the corner common to sections seven (7) eight (8) seventeen
59 (17) and eighteen (18) in Township six (6) north of Range eleven (11) East Mount Diablo Meridian, bears south sixty-seven (67) degrees forty-nine (49) minutes west at the distance of twelve (12) chains and sixty-five (65) links, eight (8) chains and eighty-three (83) links to post marked "48," at the southwesterly corner of the claim; thence north twenty-seven (27) degrees fifteen (15) minutes west nineteen (19) chains and ninety (90) links to post marked "42 and 48;" thence north seventy-nine (79) degrees thirty-five (35) minutes East four (4) chains and forty-one (41) links to the place of beginning, containing fifteen (15) acres and fifty-one hundredths (51/100) of an acre of land more or less as represented by yellow shading in the following plat.

Plat of the claim of Hall McAllister upon the Summit Quartz Mine. Sutter Creek Mining District, Amador County, California. Containing 15 51/100 acres. Scale 5 chs. to 1 inch. Var. 16° 58′ East.

(Here follows diagram marked p. 45.)

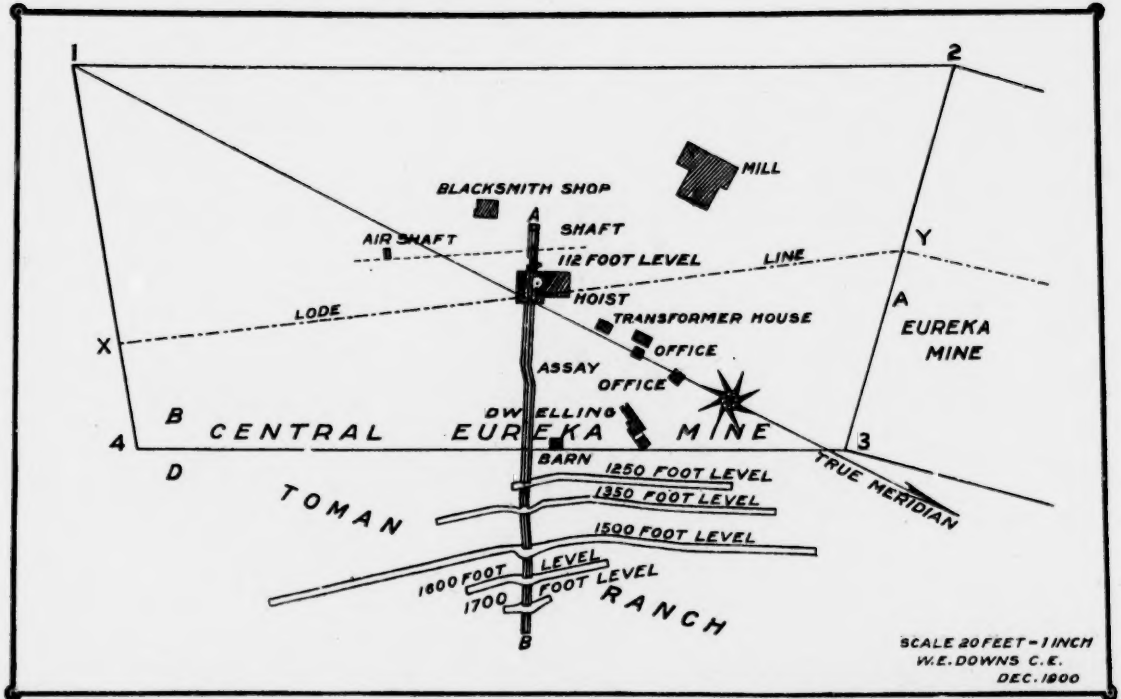
60 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said acts of Congress, have given and granted, and by these presents do give and grant, unto the said Hall McAllister, and to his heirs and assigns, the said mining premises hereinbefore described as Lot No. 51, embracing a portion of the south half of Sections seven (7) and eight (8) in Township six (6) north of Range eleven (11) east, Mount Diablo Meridian, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of eleven hundred and sixty-five, and fifty-six hundredths (1165-56/100) linear feet of the said Summit Quartz Mine vein, lode, ledge, or deposit for the length hereinbefore described throughout its entire depth, although it may enter the land adjoining and also of all other veins, lodes, ledges, or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey: Provided, That the right of possession hereby granted to such out-

61 side parts of said veins, lodes, ledges, or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges, or deposits: And provided further, That nothing in this conveyance shall authorize the grantee herein, his heirs or assigns, to enter upon the surface of a mining claim owned or possessed by another: To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said Hall McAllister and to his heirs and assigns forever, subject, nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted to the land hereinbefore described as Lot No. 51 with eleven hundred and sixty-five and fifty-six hundreths (1165-55/100) linear feet of the Summit Quartz Mine vein, lode, ledge, or deposit for the length aforesaid, throughout its entire depth as aforesaid, together with all other veins, ledges, or deposits throughout their entire depth as aforesaid, the tops or apexes of which lie inside of the exterior lines of said survey, as against all persons claiming under locations made upon such other veins, lodes, ledges, or deposits, subsequent to May 10, 1872, but subject to the right of other parties to follow any vein, or lode, with its dips, angles, and variations, legally held under a location made prior to such date.

Second. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge, or deposit, the top or apex of which lies outside of the exterior limits of said survey, should the same in its downward course

no. 447
E.C.E. McCord, p. 63
C. & M. C.




49

be found to penetrate, intersect, extend into, or underlie the premises hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge, or deposit.

Third. That the premises hereby conveyed shall be held
62 subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress, the Legislature of California may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the twenty-fifth day of November, in the year of our Lord one thou-
[SEAL.] sand eight hundred and seventy-three, and of the independence of the United States the ninety-eighth.

By the President: U. S. GRANT.

By Z. B. STURGUS,
*Ass't Secretary.*

L. K. LIPPINCOTT,
*Recorder of the General Land Office.*

Recorded Vol. 8, Pages 131 to 136.
Examined.

[Endorsed:] Central Eureka M. Co. *vs.* East Central Eureka M. Co. Plaintiff's Exhibit No. 1, Filed October 14, 1901, C. L. Culbert, Clerk, By B. R. Breese, Deputy Clerk. Filed and Recorded at the request of F. A. Howard, March 15th, 1887, at 30 min. past 10 o'clock, A. M., in Book A of Mineral Patents of Records of Amador County, Page 153 &c. L. J. Fonteurore, County Recorder, By S. G. Spagnoti, Deputy Recorder.

Plaintiff then offered, for the purpose of explaining the testimony, maps Number 1 of the Summit Mine, Plaintiff's Exhibit 3, as follows:

(Here follows diagram marked p. 63.)

64 Plaintiff offered and read in evidence certified copy of the patent record of the Summit Quartz Mine, in the words and figures following:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
WASHINGTON, D. C. *June* 21, 1900.

I, Binger Hermann, Commissioner of the General Land Office do hereby certify that the annexed copy, pages 1 to 71 inclusive of papers in Sacramento, California Mineral Entry No. 118, made October 11, 1872, by Hall McAllister for the Summit Quartz Mine, Lot No. 51 is a true and liberal exemplification of said papers on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL.] BINGER HERMANN,
*Commissioner of the General Land Office.*

| | | |
|---|---|---|
| 1 | Register's Certificate of purchase, | October 11, 1872 |
| 1½ | Receiver's receipt, final payment, | " 11, 1872 |
| 2. | Notice Application H. McAllister for patent, | January 31, 1871 |
| 65 | 3. Register's Certificate of Posting, | February 7, 1871 |
| | 4. Diagram posted. | |
| 5. | Papers recd. from Surveyor General, | June 3, 1871 |
| 6. | Survey and Field Notes. | |
| 9. | Report Deputy Surveyor, | May 1, 1872 |
| 11. | Final Oath of Surveyor & Assistants. | |
| 12. | Register's Certificate. Date of filing papers. | |
| 13. | Approval Survey by Surveyor General, | June 4, 1872 |
| 14. | Certificate by Surveyor General, | June 8, 1872 |
| 15. | Register's order of Publication, | Feb. 7, 1871 |
| 16. | Affidavit of Publication, | July 21, 1871 |
| 16. | Order and copy of Notice Published. | |
| 19. | Notice posted on claim. | |
| 20. | Affidavit of continuous posting, Allen Tibbets. | |
| 21. | Affidavit of continuous posting, John A. Eagan. | |
| 22. | Diagram posted. | |
| 23. | Petition for Patent, | Jan. 31, 1871 |
| | 27. Affidavit B. Maxey, surface sights, | Apr. 3, 1872 |
| 66 | 28. J. Foot Turner, abandonment of surface, | Mar. 16, 1871 |
| 29. | Acknowledgment of above. | |
| 30. | Citation to J. S. Tanner, | Oct. 10, 1871 |
| 32. | Citation to H. McAllister in claim of Morgan. | |
| 34. | Citation, Placerville & S. V. R. R. Co. | |
| 36. | Abandonment by F. M. Morgan. | |
| 38. | Abandonment by J. S. Tanner | |

40. Register Certificate to U. S. Sur. Gen'l. no adverse claims, etc. October 30, 1871
41. Affidavit A. Tibbets extent of claim and amount of surface.
43. Affidavit Jas. Morgan
44. Affidavit H. McAllister citizenship, work, etc. April 17, 1872.
45. Statement, papers not filed.
Affidavit W. N. Johnson loss of record and customs.
47. Decision of Register and Receiver.
67 48. Letter of Transmittal.

*Register's Final Certificate of Entry.*

U. S. Land Office at Sacramento, Cal.

OCTOBER 11TH, 1872.

"Toman Ranch," had been and was served from the title to said sur-
Mineral Entry No. 118.

Lot No. 51.

It is hereby certified that, in pursuance of the Mining Act of Congress, approved July 26, 1866, and the Act amendatory thereof, approved July 9, 1870, Hall McAllister whose post office address is.....on this day purchased that mineral claim or lot of land designated as Survey No. 51 in the S. ½ of Sections 7 & 8 in Township No. 6 North of Range 11 East Mt. Diablo Meridian, situate, lying and being in the Sutter Creek Mining District, in the County of Amador and State of California known as the Summit Quartz Mining Claim, embracing one thousand one hundred and seventy-two and 22-100 (1172 22-100) linear feet along the course of the vein or lode with 16 51-100 acres of surface ground, as shown by said survey, for which the said Hall McAllister have this day made payment to the Receiver in full, amounting to the sum of eighty ($80.00) dollars.

Now, therefore, be it known, that upon the presentation of this certificate to the *Commissioner of the General Land Office*, to-
68 gether with the plat, survey, and description of said claim, a *Patent* shall issue thereupon to the said Hall McAllister if all be found regular.

T. B. McFARLAND, *Register.*

[Endorsed:] Register's Final Certificate of Entry. Case of the Summit Quartz Mining Claim of Hall McAllister upon the Summit Quartz Lode, being Lot No. 51 in T. 6 N. of R. 11 E. Sutter Creek Mining District Amador County, California claimed by Hall McAllister.

*Receiver's Receipt.*

(Duplicate to be given the Purchaser.)

Mineral Entry No. 118.

Lot No. 51.

U. S. Land Office at Sacramento, Cal.

OCTOBER 11TH, 1872.

Received from Hall McAllister by Johnson & Severance attys the sum of Eighty dollars, the same being in full for the surface area embraced by Survey No. 51 in the S. ½ of Section 7 & 8 in Township No. 6, North of Range No. 11, East Mt. Diablo Base & Meridian, said Mineral Claim or lot of land being situate in Sutter Creek Mining District, County of Amador and State of California and known as the Summit Quartz Mining Claim, embracing 15
69 51-100 acres, as shown by said survey.

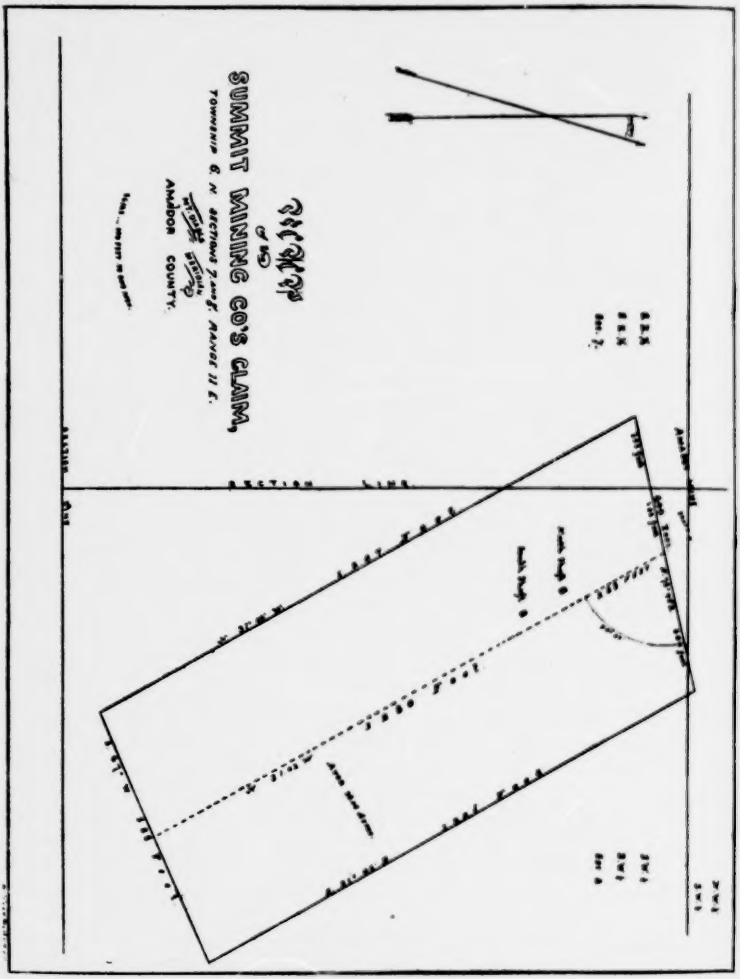
$80.

HART FELLOWS, *Receiver.*

[Endorsed:] Receiver's Receipt. Case of the Summit Quartz Mining Claim, Lot No. 51, in T. 6. N. R. 11 E. in Sutter Creek Mining District Amador County California claimed by Hall McAllister.

*Application for a Patent for a Gold Quartz Claim.*

Notice is hereby given to whom it may concern, that it is the intention of the undersigned, Hall McAllister, to make immediate application to the Government of the United States for a patent to the following described Quartz Gold Mining Lode Claim, containing gold bearing quartz rock in place, known as the Summit Mining Company's claim, situated, lying and being in Sutter Creek Mining District, County of Amador and State of California, commencing at a post on said lode, to which is attached this notice and a Diagram of said claim, at a point where said claim joins the Amador Mining Company's claim or lode (formerly known as the Hayward Mine) on the North, thence running South 31° 02′ East, on what is known as the Badger or Hayward Lode, twelve hundred and thirty feet, to the center of the Volcano and Ione City Road; Also a sufficient quantity of surface ground on each side of said lode, for the convenient use and working of said mine, to-wit: Three hundred feet in width on each side of said lode or vain, the entire length thereof, more particularly described as follows, to-wit: commencing at the post above mentioned, thence running North 78° 48′ East three




No. 4447.
C.C. & M. Co. vs. } p. 71
C. & M. Co.

hundred feet, to a post; thence South 31° 02′ East twelve hundred and five feet to a post; thence South 67° West five hundred
70 and eighty-five feet to a post; thence North 31° 02′ West, twelve hundred and eighty-seven feet to a post; thence 78° 48′ East Three hundred feet, to the place of beginning, containing 16.05 acres of the surveyed public lands of the United States subject to sale in the Sacramento Land District, California, on the West half of the Southwest quarter of Section eight (8) and the Southeast quarter of the Southeast quarter of Section seven (7) in Township number six (6) North, Range Eleven (11) East, Mount Diablo Base and Meridian, the same embracing the Summit Mining Company's lode or vein, above described.

All persons holding any adverse claim thereto, or any part thereof, are hereby required to present the same before the Register and Receiver of the United States Land Office for Sacramento Land District, at Sacramento, California, within ninety (90) days from the first publication of this Notice.

Posted on said claim January 31st, 1871.

HALL McALLISTER.

JOHNSON & SEVERANCE,
*92 J Street Sacramento*
*Attys. for Applicant.*

Posted in U. S. Land Office, Sacramento, Feby. 7th, 1871.

UNITED STATES LAND OFFICE,
SACRAMENTO. CAL., *Oct. 2nd*, 1872,

I hereby certify, That the foregoing notice and diagram in Application for Patent No. 103, were posted in this office on the 7th day of February, 1871, and that the same remained so posted for ninety consecutive days from the date of such posting.

T. B. McFARLAND, *Register.*

[Endorsed:] No. 103—Notice and Diagram Posted in U. S Land Office, Sacramento, Cal.

(Here follows diagram marked p. 71).

72 Recd. with Sur. Genl's letter of June 6, 1872.

FIELD NOTES
of
the Survey of the Summit Quartz Mine,
Claimed by Hall McAllister.
Located in Sutter Mining District, Amador County, California.
Township 6, North Range 11 East Mount Diablo Meridian,
by
William L. McKim U. S. Deputy Surveyor under his Instructions dated January 4th, 1872.
Survey Commenced January 22, 1872.
Survey Completed January 22, 1872.

*Preliminary Oath of Assistants.*

I, ——— ———, do solemnly swear that I will well and truly perform the duties of Compassman, according to instructions given me, and to the best of my skill and ability.

——— ———.

Subscribed and sworn to before me, this — day of —— 187—.

———— ————,
*U. S. Deputy Surveyor.*

We, D. D. Reaves and Allen Tibbits do solemnly swear that we will faithfully execute the duties of Chain Carriers that we
73 will level the chain upon uneven ground, and plumb the tally pins, whether by sticking or dropping the same; that we will report the true distance to all notable objects, and the true length of all lines; that we will assist in measuring, to the best of our skill and ability, in the Survey of the Summit Mine a Gold bearing Quartz Vein or Lode of Gold bearing Quartz Rock in the Sutter Mining District.

D. D. REAVES
ALLEN TIBBITS.

Subscribed and sworn to before me, this 22nd day of January, 1872.

WILLIAM L. McKIM,
*U. S. Deputy Surveyor.*

I, —— —— do solemnly swear that I will well and truly perform the duties of —— according to instructions given me, and to the best of my skill and ability.

—— ——

Subscribed and sworn to before me, this — day of —— 187—

—— ——
*U. S. Deputy Surveyor.*

*Field Notes.*

Of the final survey of the Mining Claim known as the Summit Quartz Mine claimed by Hall McAllister.

Located in Sutter Mining District, in Amador County,
74 California, Township No. 6 North, Range No. 11 East, Mount Diablo Base and Meridian.

Executed by Wm. L. McKim, U. S. Deputy Mineral Surveyor, under Instructions from J. R. Hardenbergh, U. S. Surveyor-General, dated January 4, 1872.

Survey commenced, January 22, 1872.

Survey completed, January 22, 1872.

Course. Chains. Survey of the line along the supposed general course of the Vein or Lode (no outcrop visible). Beginning at a post marked 48, from which a White Oak, 40in. diam. bears N. 63° 58′ E. 1.76 chs. distant.

A White Oak, 30 in. diam. bears S. 6° 02′ E. 2.89 chains distant.

An old shaft, 4x4 ft. 175 feet deep, bears N. 66° 40′ W. 3.66 chains distant; and

The corner common to Sections 7, 8, 17 and 18, Township 6 North, Range 11 East, Mount Diablo Base and Meridian, bears 67° 49′ W.
75 Var. 16° 58′ E.

12.65 chains distant. Thence Along the supposed general course of the Vein.
N. 36° 67′ W. Var. 16° 58′ E.

1.00 Ravine.

1.50 Road.

12.80 Hoisting Works over Middle Shaft.

Course. Chains.

13.50 Building over North Shaft.

15.72 Road to Amador Quartz Mine.

17.66 To a post marked 42 and 48, being common to the Southern boundary of the line along the Vein or Lode of the Amador Quartz Mine, and the Northern boundary of the line along the supposed general course of the Vein or Lode of the Summit Quartz Mine, from which,

A Pine Tree, 8 in. diam. bears S. 57° 25′ W, 72 chains distant.

Survey of the Exterior Boundaries of the land claimed with the Summit Quartz Mine.
76

Beginning at a post marked 42 and 48, being common to the Southern boundary of the line along the Vein or Lode of the Amador Quartz Mine, and the Northern boundary of the line along the supposed general course of the Vein or

Lode of the Summit Quartz Mine, from which,
A Pine Tree, 8 in. diam. bears S. 57° 25′ W. 72 ch. dist.
Thence,

N. 79° 35′ E. Along the line between the Amador Quartz Mine and the Summit Quartz Mine.
1.70 Road to Amador Quartz Mine
4.68 To post marked 42 and 48.
Thence

S. 27° 15′ E. Var. 16° 58′ E.
15.76 To post marked 48 standing in the Volcano and Ione Road. Thence,

S. 52° 56′ W. Along said road.
Var. 16° 58′ E.
2.41 To post marked 48 and Southern boundary of the line along the Vein or Lode.

77

Course. Chains.
8.63 To post marked 48 from which,
A White Oak, 14 in. diam. bears N. 87° 38′ E. 57 chs. dist.
A Pine, 5 in. diam. bears S. 70° 48′ W. 1.19 chs. distant. Thence,

N. 27° 15′ W. Var. 16 58′ E.
1.25 Ravine.
5.50 Sutter and Volcano Road.
13.00 Road to Amador Quartz Mine.
19.90 To post marked 42 and 48 and common to S. W. corner of land claimed with theAmador Quartz Mine. Thence

N. 79° 35′ E. Along the line between the lands claimed by said Mines.
4.41 To place of beginning.

Containing 15 51/100 acres.

*Report.*

U. S. Deputy Surveyor's Office.

JACKSON, May 1, 1872.

Hon. J. R. Hardenbergh, U. S. Surveyor General for California.

78 SIR: In compliance with instructions from your office bearing date the fourth day of January, 1872, I herewith submit the following report and return of the improvements and character of the same in and upon that certain mining claim known as the Summit Quartz Mine, a gold bearing Vein or Lode of Quartz Rock situate in Sutter Mining District, Sections 7 and 8, Township 6

North, Range 11 East, Mount Diablo Base and Meridian, County of Amador, State of California.

Total Valuation of Labor and Improvements.

From the affidavits of Allen Tibbits and John Keyes, herewith exhibited and marked respectively Exhibits A and B and made parts of this return and report. The least amount set forth in said affidavits as the value of the labor and improvements placed in and upon said Summit Quartz Mine, is fifty-five thousand three hundred dollars.

Character of Improvements.

The character of the improvements upon said Summit Quartz Mine are as follows, to wit:

Two shafts, each 300 feet deep.

One shaft 45 feet deep.

Hoisting works and other buildings.

The ore has been worked by ordinary milling process:—average yield not known.

The dip of the vein is east, forming an angle with the horizon of ——.

79 No mill attached to the property.

Mine not pumped.

Timber distant from mine about eight miles.

Lode is accessible by a road.

Respectfully, &c.,

WILLIAM L. McKIM,
*U. S. Deputy Mineral Surveyor.*

*List of Names.*

A list of the names of the individuals employed to assist in running, measuring, or marking the lines and corners described in the foregoing field notes of survey of the Summit Quartz Mine, numbered 48, Sutter Mining District, Sections 7 and 8, Township 6 North, Range 11 East of Mount Diablo Meridian, County of Amador, State of California, showing the respective capacities in which they acted.

William L. McKim, U. S. Dept. Surveyor, Compassman.

D. D. Reaves, Chainman.

Allen Tibbits, Chainman.

—— ——, Axeman.

*Final Oaths of Assistants.*

We hereby certify that we assisted William L. McKim, U. S. Deputy Surveyor, in surveying that certain mining claim, known as the

Summit Quartz Mine, and numbered 48; a gold bearing
80 quartz vein, or lode of gold bearing quartz rock in the Sutter Mining District, Sections 7 and 8, Amador Co. Cala. and that said survey has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to the instructions furnished by the Surveyor-General.

D. D. REAVES,
ALLEN TIBBITS.

Subscribed and sworn to before me, this 22nd day of January, 1872.

WILLIAM L. McKIM,
*U. S. Deputy Surveyor.*

*Final Oath of Deputy Surveyor.*

I, William L. McKim, Deputy Surveyor, do solemnly swear that in pursuance with instructions from J. R. Hardenbergh, United States Surveyor-General for California, bearing date the 4th day of January, 1872, I have well, faithfully and truly, in my own proper person, and in strict conformity with the instructions furnished by the Surveyor-General, the Surveying Manual, and the laws of the United States, surveyed all those parts or portions of that certain mining claim, known as the "Summit" Quartz Mine, numbered 48, a gold bearing quartz vein, or lode of gold bearing quartz rock,
81 in the Sutter Mining District, Sections 7 and 8, Township 6 North, Range 11 East of Mount Diablo Meridian in the County of Amador, State of California, as are represented in the foregoing field notes as having been surveyed under my directions; and I do further solemnly swear that all the corners of said surveys have been established and perpetuated in strict accordance with the Surveying Manual and printed instructions, and that the foregoing are the true and original field notes of such survey.

WILLIAM L. McKIM,
*U. S. Deputy Surveyor.*

Subscribed and sworn to before me, this 2d day of April, 1872.

R. M. BRIGGS,
[NOTARIAL SEAL.] *Notary Public, Amador County.*

*Register's Certificate.*

To United States Surveyor General:

U. S. Land Office, Sacramento, Cal., Oct. 30th, 1871.

In relation to Application No. 193 of Hall McAllister for Patent to a Quartz Gold Mining Claim, Situated in Amador County, California.

Duplicate.

82 I hereby certify that the records and files of this office show:

First:—That the above application No. 103 for a patent to said mining claim, together with a copy of the diagram and notice thereof, were filed in this office on the 7th day of February, 1871.

Second:—That on the same day the copy of said notice and diagram were duly posted in this office, and remained so posted for ninety consecutive days.

Third:—That said notice and diagram were duly posted on said claim on the 31st day of January, 1871, and remained so posted for ninety consecutive days.

Fourth:—That upon the order of the Register of this office, a copy of said notice was duly published in the Amador Weekly Ledger for said period of ninety days, the same being a newspaper published at Jackson in Amador County, State aforesaid.

Fifth:—That no claim exists against the United States Government for the cost of such publication, all claim therefor having been waived by an agreement duly filed with said application.

Sixth:—And I further certify that no adverse mining claim to any portion of said mining claim has been filed in this office.

83 Being in Sections 7 and 8, Tp. 6 N. R. 11 E. Mt. D. B. & M.

In witness whereof, I have hereunto set my hand and official seal, the day and year first above written.

(L. S.) JOHN G. McCALLUM,
*Register.*

Register's Seal, Sacramento.

U. S. Surveyor-General's Office,

San Francisco, Cal., *June* 4, 1872.

The foregoing Field Notes of the Surveys of the Summit Quartz Mine, claimed by Hall McAllister, in Amador County, Township 6 North, Range 11 East, Mount Diablo Meridian, in the State of California, executed by William L. McKim, U. S. Deputy Surveyor, under his instructions dated January 4, 1872, having been critically

examined, and the necessary corrections and explanations made, the said Field Notes and the Surveys they describe are hereby approved.

J. R. HARDENBERGH,
*U. S. Surveyor-General for California.*

U. S. Surveyor-General's Office,

SAN FRANCISCO, *June* 8, 1872.

I, J. R. Hardenbergh, U. S. Surveyor-General for Cali-
84 fornia, do hereby certify that the foregoing Transcript is a full, true and correct copy of the original Field Notes, as the same remains of record and on file in this office.

Attest my hand and official seal the day and date hereinabove written.

[SEAL.] J. R. HARDENBERGH,
*U. S. Surveyor-General for California.*

(No. 103.)

United States Land Office.

SACRAMENTO, CAL., *February 6th,* 1871.

In the Matter of the Application of HALL MCALLISTER

for a Patent to a Quartz Gold bearing Mining Claim, soon to be filed in said office, I have agreed with said application to accept, and hereby agree to accept said applicant for the payment of the costs of publishing the notice therein in the Amador Weekly Ledger published in Jackson, Amador County, California, the time prescribed by law, as may be ordered by the Register of said Office, and hereby waive all claim against the Government of the United States for the cost of such publication.

T. A. SPRINGER, [SEAL.]
*Publisher of the Amador Weekly Ledger.*

85 (No. 103.)

*Application for a Patent to a Quartz Gold Mining Claim.*

United States Land Office,

SACRAMENTO, CAL., *February 7th,* 1871.

Hall McAllister having filed his application in this office for a Patent to a Mining Claim, and the law and instructions in such cases provided, having been complied with, It is hereby ordered that the annexed Notice of such Application be published for ninety days

in the "Amador Weekly Ledger," a newspaper published nearest the location of said claim at Jackson in Amador County, State of California.

[SEAL.] JOHN G. McCALLUM,
*Register.*

[Endorsed as follows:]
No. 103. Publishers' Agreement and Register's Order of Publication. Filed Feby. 7th, 1871.

STATE OF CALIFORNIA, *County of Amador, ss:*

T. A. Springer, being duly sworn, deposes and says that he is the publisher of the Amador Weekly Ledger, a weekly newspaper, printed and published at Jackson, in the State and County aforesaid, and that the Notice of Application for patent to a Quartz Mining Claim, hereunto attached, was printed and published in said
86 newspaper once a week for the space of ninety (90) days, prior to the date hereof, to-wit: from and including the 11th day of March, A. D. 1871, up to and including the issue of said newspaper of the 10th day of June, 1871, and that he has been paid in full for such publication.

THOMAS A. SPRINGER.

Subscribed and sworn to before me, this 21st day of July, A. D. 1871.

In testimony whereof, I hereunto set my hand and official seal, the day and year last above written.

[SEAL.] J. B. STEVENS,
*Notary Public.*

(No. 103.)

*Application for a Patent to a Quartz Gold Mining Claim.*

United States Land Office,

SACRAMENTO, CALIFORNIA, *February 7th*, 1871.

Hall McAllister, having filed his application in this office for a patent to a mining claim, and, the law and instructions in such cases provided having been complied with, it is hereby ordered that the annexed notice of such application be published for ninety days in the Amador Weekly Ledger, a newspaper published nearest the location of said claim at Jackson, in Amador County, State of California.

JOHN G. McCALLUM,
*Register.*

87 (Copy of the Notice posted on the claim.)

*Application for a Patent for a Gold Quartz Claim.*

Notice is hereby given to whom it may concern, that it is the intention of the undersigned, Hall McAllister, to make immediate application to the Government of the United States for a patent to the following described quartz gold mining lode claim, containing gold bearing quartz rock in place, known as the Summit Mining Company's claim, situate, lying and being in Sutter Creek Mining District, County of Amador and State of California, commencing at a post of said lode, to which is attached this notice, and a diagram of said claim, at a point where said claim joins the Amador Mining Company's claim or lode (formerly known as the Hayward mine) on the north; thence running south 31° 02′ east, on what is known as the Badger or Hayward lode, twelve hundred and thirty feet, to the center of the Volcano and Ione City road; also a sufficient quantity of surface ground on each side of said lode for the convenient use and working of said mine to-wit: three hundred feet in width on each side of said lode or vein, the entire length thereof, more particularly described as follows, to-wit: commencing at the post above mentioned, thence running north 78° 48′ east, three hundred
88 feet to a post; thence south 31° 02′ east, twelve hundred and five feet to a post; thence south 67° west five hundred and eighty-five feet to a post; thence north 31° 02′ west, twelve hundred and eighty-seven feet to a post; thence 78° 48′ east, three hundred feet to the place of beginning containing 16.05 acres of the surveyed public land of the United States, subject to sale in the Sacramento Land District, California, on the west half of the southwest quarter of section eight (8) and the southeast quarter of the southeast quarter of section seven (7) in township number six (6) north, range eleven east, Mount Diablo base and meridian, the same embracing the Summit Mining Company's lode or vein above described. All persons holding any adverse claims thereto, or any part thereof, are hereby required to present the same before the Register and Receiver of the United States Land Office for Sacramento Land District, at Sacramento, California, within ninety (90) days from the first publication of this notice.

Posted on said claim, January 31st, 1871.

HALL McALLISTER.

JOHNSON & SEVERANCE, 92 *J Street*,
*Attorneys for Applicant.*

Mar11ds90.

[Endorsed as follows:] No. 103. Affidavit of Publication of Notice. Filed July 25th, 1871.

89 *Application for a Patent for a Gold Quartz Claim.*

Notice is hereby given to whom it may concern that it is the intention of the undersigned, Hall McAllister, to make immediate application to the Government of the United States for a patent to the following described Quartz Gold Mining lode claim, containing gold bearing quartz rock in place, known as the Summit Mining Company's claim, situated lying and being in Sutter Creek Mining District, County of Amador and State of California, commencing at a post on said lode, to which is attached this notice and a Diagram of said claim, at a point where said claim joins the Amador Mining Company's claim or lode (formerly known as the Haywood mine) on the North, thence running South 31° 02′ East, on which is known as the Badger or Haywood Lode, twelve hundred and thirty feet, to the center of the Volcano and Ione City Road. Also a sufficient quantity of surface ground on each side of said lode, for the convenient use and working of said mine, to-wit, three hundred feet in width on each side of said lode or vein, the entire length thereof, more particularly described as follows, to-wit: Commencing at the post above mentioned, thence running North 78° 48′ East, three hundred feet to a post; thence South 31° 02′ East, twelve hun-
90 dred and five feet to a post; thence South 67° West five hundred and eighty-five feet to a post; thence North 31° 02′ West twelve hundred and eighty-seven feet to a post; thence 78° 48′ East three hundred and — feet to the place of beginning, containing 16.05 acres of the surveyed public lands of the United States subject to sale in the Sacramento Land District, California, on the West half of the South West quarter of Section Eight (8) and the South East quarter of the South East quarter of Section Seven (7) in Township number six (6) North Range Eleven (11) East Mount Diablo Base and Meridian, the same embracing the Summit Mining Company's lode or vein, above described.

All persons holding any adverse claim thereto, or any part thereof, are hereby required to present the same before the Register and Receiver of the United States Land Office for Sacramento Land District, at Sacramento, California within ninety (90) days from the first publication of this notice.

Posted on said claim January 31st, 1871.

HALL McALLISTER.

JOHNSON & SEVERANCE,
92 *J Street, Sacramento, Attys. for Applicant.*

Posted in U. S. Land Office Sacramento Feby 7th 1871.

91 STATE OF CALIFORNIA, *County of Amador.*

Allan Tibbits being duly sworn deposes and says that he was present when the notice and diagram hereunto attached were posted

on the Summit Mining Claim described in said notice and diagram, that the same were posted in a conspicuous place on said Mining Claim, to-wit: Upon a post at the north end of said claim, on the 31st day of January, 1871, and remained so posted for the term of ninety days consecutively from the date of such posting, and said Allen Tibbits further says, that he has no interest in said mining claim.

ALLEN TIBBITS.

Subscribed and sworn to before me this 2nd day of Aug. 1871.

In testimony whereof I hereunto set my hand and affix my official seal the day and year last above written.

[SEAL.] THOS. DUNLAP.
*Notary Public.*

STATE OF CALIFORNIA, *County of Sacramento, ss.*

John A. Eagan being first duly sworn says that he is a citizen of the United States over the age of twenty-one years, a resident
92 of Sutter Creek in the County of Amador, state aforesaid, and is a member of the Assembly of said state; that he posted the notice and diagram, of which the within is a true and correct copy, on the said Summit Mining Claim described in said notice and diagram, in a conspicuous place, to wit, upon a post at the north end of said claim, on the thirty-first day of January, A. D. 1871, and the same were not taken down until after the eleventh day of June, A. D. 1871; that Allan Tibbits was present at the time he so posted said notice and diagram; that the reason the same copies of said notice and diagram so posted are not filed herewith is that the same had become mutilated and disfigured by their long exposure. Affiant further says that he has no interest in said mining claim.

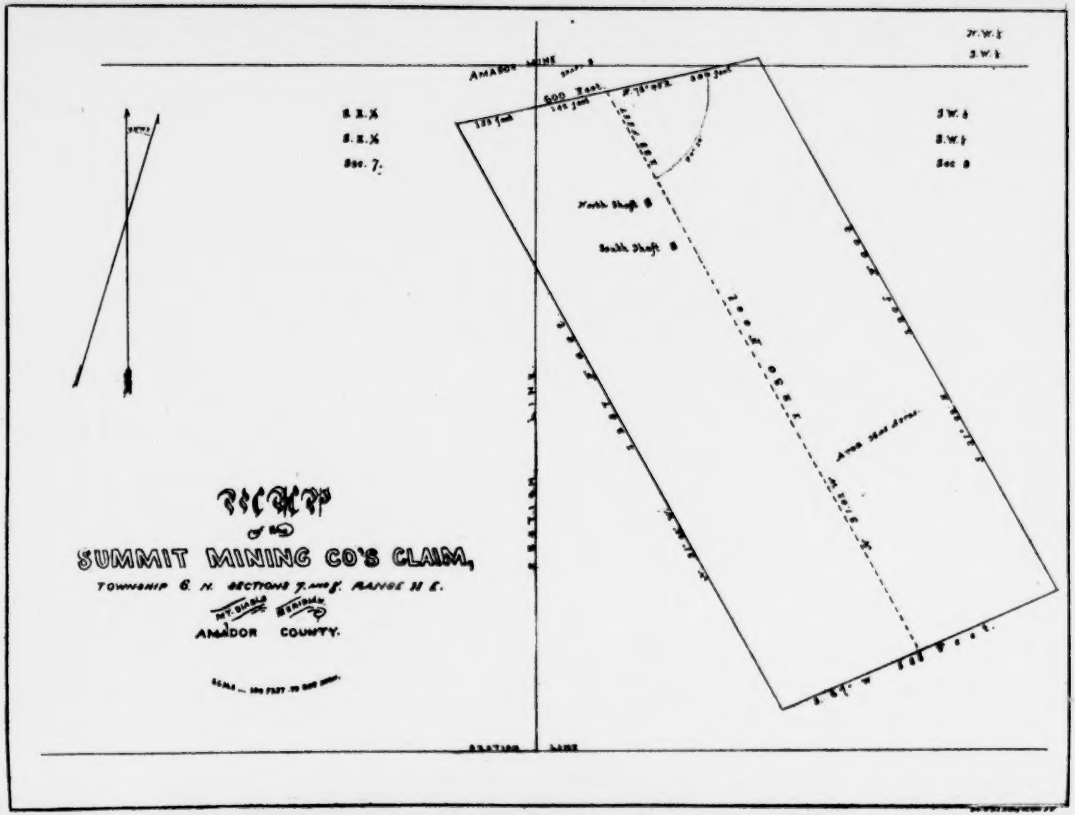
JOHN A. EAGAN.

Subscribed and sworn to before me this 4th day of April, A. D. 1872.

[SEAL.] WM. NEELY JOHNSON,
*Notary Public.*

[Endorsed as follows:]
No. 103. Affidavits of posting Notice & Diagram on the Claim. Filed April 6th, 1872.

(Here follows diagram marked p. 93.)




No. 447.
C. & M. Record, Jan 93
Cal. Co

94 & 95 To the Register and Receiver of the United States Land Office of the Sacramento District at Sacramento, Sacramento County, State of California; and to the Commissioner of the General Land Office, Washington City, D. C.

GENTLEMEN: Your petitioner, Hall McAllister, a native born citizen of the United States, a resident of the City and County of San Francisco, State of California, hereby makes application, under and by virtue of the provisions of an Act of Congress, entitled "An Act granting the right of way to ditch and canal owners over the public lands, and for other purposes," approved July 26th A. D. 1866, to locate and purchase, for himself, individually, as and for a gold bearing quartz lode claim all that certain vien of quartz rock in place and gold bearing quartz ledge or lode, known as the Summit Mining Company's Claim, situate, lying and being in Sutter Creek Mining District, County of Amador, State of California, commencing at a post on said lode, to which is attached a notice and a diagram of said claim, true and correct copies of which accompany this application, at the extreme southern end of the Amador Mining Company's claim or lode (formerly known as the Hayward mine) which said mining claim it joins on the North, thence
96 running South 31° 02′ East, on what is known as the Badger or Hayward Lode, twelve hundred and thirty feet to the center of the Volcano and Ione City Road; also a sufficient quantity of surface ground on each side of said lode for the convenient use and working of said mine, to-wit, three hundred feet in width on each side of said vein or lode the entire length thereof; more particularly described as follows: commencing at the post above mentioned, standing at the extreme southern end of the Amador Mining Company's cliam, thence running North 78° 48′ East, three hundred feet to a post; thence South 31° 02′ East, twelve hundred and five feet to a post; thence South 67° West, five hundred and eighty-five feet to a post; thence North 31° 02′ West, twelve hundred and eighty-seven feet to a post; thence 78° 48′ East three hundred feet, to the place of beginning, containing 16.05 acres of the public lands subject to sale in said United States Land District at Sacramento, State of California, in the West half of the South West quarter of Section Eight (8) and the South East quarter of the South East quarter of Section Seven (7) in Township Six (6) North, Range Eleven (11) East, Mount Diablo Base and Meridian, being surveyed lands and returned as mineral lands by the United States Surveyor
97 General, and embracing the Summit Mining Company's lode or vein, above described.

Your petitioner shows that his possessory right to said above described land is derived from the original locators thereof, from a location made of the north seven hundred and eighty feet, March 26, 1863, and of the remainder thereof, June 22nd, 1865, according to the rules and customs of miners in force in said Mining District, the said north seven hundred and eighty feet having been duly recorded by the Recorder of said Mining District in the Book of

Records for mining claims of said District, on the 26th day of March, A. D. 1863, the remaining portion of said lode having been duly recorded by the said Recorder in said Book of Records, on the 22nd day of June, 1865, and also by the County Recorder of said Amador County, in Book "A" of the Mining records of said County, page 112, ever since which time, to-wit, for more than two years last past, the same being the time prescribed by the Statutes of Limitations for mining claims of said State of California, your petitioner and those under whom he claims have occupied and improved said lode, and been engaged in extracting the gold bearing quartz therefrom, according to the customs and rules of the miners in said mining district, and under the laws of said State and the implied
98 sanction of the United States; and the said local rules have, at all times, been complied with by your petitioner and those under whom he claims; that such possession and occupation has at all times been exclusive, actual and uninterrupted, and there is no controversy or opposing claim within the knowledge, information or belief of your petitioner in regard to the possession of the same or any part or portion thereof by any person or association of persons whatever.

Your petitioner further shows that he has expended in labor and permanent mining improvements on said claim, in sinking shafts and erecting hoisting works with the necessary machinery, blacksmith shop and other necessary buildings thereon, for the development thereof, more than one thousand dollars, to-wit: to the value of about eighty thousand dollars.

Your petitioner further shows, that on the 31st day of January, A. D. 1871, he caused a diagram of said Summit Mining Company's claim, together with a written notice of his intention to make this application for a patent therefor, to be posted in a public and conspicuous place on said claim, to-wit, on a post hereinbefore described, standing at the extreme southern end of the Amador Mining Company's claim, on the northern end of said Summit Mining Company's claim, full, true and correct copies of which said Dia-
99 gram and Notice are hereunto attached and herewith submitted.

Your petitioner, in conformity to the regulations of this department, herewith presents a certified copy of the laws or customs of the miners of said Sutter Creek Mining District in force at the date of the location of said Summit Mining Company's mine aforesaid, and a certificate, under seal, of the County and Mining Recorders of said County and Mining District, giving copies of the original locations of said claim, hereinbefore mentioned, with the names of the locators thereof; also an abstract of title, tracing your petitioner's right of possession from said original locators to himself.

STATE OF CALIFORNIA, *County of Sacramento, ss:*

In the Matter of the Application of the Summit Mining Company for Entry and Patent to Quartz Lode and Surface Ground.

Jesse B. Maxey being duly sworn says: I am a citizen of the United States and fifty-four years of age; I reside in the Sutter Creek Mining District, County of Amador, State of California; I have heretofore been engaged in mining in said district; I know the location of the Summit Mine and the mining rules of said district in which said Summit Mine is situated; I have seen the diagram appended
100 to the petition of said Company for entry of and patent to lode and surface ground. I am familiar with the customs and usages of miners in said mining district, and to the holding of surface ground in connection with a mine, for milling and mining purposes; It is a well recognized custom and usage of miners, that the owners of mining claims shall hold and have occupancy of so much surface ground, in connection with the mine, as shall be necessary for reduction works, hoisting works, dumpage and drainage; By such custom and usage said company should have and will require, and are in the actual occupancy of at least 16.05 acres of surface ground; I know that said company is in possession of said ground described in said diagram, and that the ledge of the company passes through and dips in said ground, and that the same is required by said company for milling and mining uses; and the works which are thereupon, together with other expenditures which have been made thereon have cost over fifty thousand dollars.

JESSE B. MAXEY.

Subscribed and sworn to before me this 3rd day of April, A. D. 1872.

[SEAL.] WM. NEELY JOHNSON,
*Notary Public, Sacramento, Cal.*

101 County Clerk in and for Amador County, California.

STATE OF CALIFORNIA, *County of Amador, ss*

On this 16th day of March A. D. 1871, before me, County Clerk in and for said County, personally appeared J. Foot Turner personally well known to me, and known to me to be the individual described in and who executed the within Declaration of Abandonment of Pre-emption Claim No. — and the said J. F. Turner acknowledged to me that he executed the said Declaration of Abandonment freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the Court House Jackson, the day and year aforesaid.

[L. S.] D. B. SPAGNOLI,
*County Clerk.*

U. S. LAND OFFICE.
SACRAMENTO, CAL., *April* 11, 1871.

I hereby certify the within and foregoing to be a full true and correct copy of the abandonment of J. Foot Turner to Hall McAllister offered and received as evidence in the case of Town Site of Sutter Creek the original remaining on record in this
102 office.

HART FELLOWS, *Receiver.*

[Indorsed as follows:] No. 1811. Abandonment of Pre-emption Claim of County Judge to Summit Quartz Mine: Section —, T. — N. — R. — E., Dated March 16th, 1871. Filed April 5th, 1871.

—— ——, *Register.*

*Abandonment of Pre-emption Claim.*

To the Register of the United States Land Office at Sacramento, California.

SIR: I hereby give you notice, that whereas, I did on the 22nd day of September, A. D. 1870, file in your office my Declaratory Statement, No. 1811 claiming right of pre-emption to the S ½ of Section 6 and all of Section 7, T. 6 N., R. 11 E., Mount Diablo Meridian.

I do hereby declare that I have abandoned the same so far as it affects the Quartz ledge and surface ground claimed by Hall McAllister as described in his application No. 103 and the Diagram thereof now on file in this office being in Sections 7 & 8, Township 6 N. Range 11 E., the land above described, and I hereby request that my said Pre-emption Claim No. 1811 may be cancelled on the
103 records and files of your Office, as to the lands hereby abandoned.

In witness whereof, I have hereunto set my hand and seal, at Jackson, 16″ day of March, A. D. 1871.

[L. S.] J. FOOT TURNER, [SEAL.]
*County Judge Amador Co.*

Subscribed and declared to before me, this 16″ day of March, A. D. 1871.

D. B. SPAGNOLI,
*Register, County Clerk Amador County, Cal.*

UNITED STATES OF AMERICA:

Sacramento District, California.

LAND OFFICE, SACRAMENTO, CAL., *Oct.* 10", 1871.

Base and Meridian of Mount Diablo.

Citation Before the Register and Receiver of Land Office at Sacramento.

In the Matter of the Claim of Hall McAllister App for Patent No. 103 to the Summit Quartz Mine & Surface Ground on SE ¼ of SE ¼ of Sec. 7 and SW ¼ of SW Quarter of Section No. 8 Township No. 6 North Range No. 11 East.

At the request of the above claimant, and Applicant for
104 Patent No. 103 it is hereby ordered, That John S. Tanner D. S. 1369 also claiming as agricultural a portion the above described tract of land, be and appear before the Register and Receiver, at the Land Office, Sacramento, at 1 o'clock p. m., on the 16th day of November, A. D. 1871, then and there to produce evidence to contest the claim of the said Hall McAllister and offer proofs as to character of said land or the same will be awarded to him upon the proper proof that he has fully met the requirements of the Mineral Law and Instructions.

Witness our hands and the seal of this office the day and date first above written.

[SEAL.] JOHN G. McCALLUM, *Register.*
HART FELLOWS, *Receiver.*

United States Land Office.

SACRAMENTO, CALIFORNIA.

I, John A. Eagan, a white male citizen of the United States over the age of twenty-one years, hereby certify that I certify that I served the within notice upon John S. Tanner by delivering to him a true and correct copy thereof, on the 14th day of October, 1871, at the town of Sutter Creek in the County of Amador & State of California.

JOHN A. EAGAN. [L. S.]

105 I hereby certify that I consider said Affiant John Eagan is a credible and respectable person, and that the foregoing affidavit was sworn and subscribed to before me this 17th day of October A. D. 1871.

In witness whereof I have hereunto set my hand & affixed my official seal the day and year last above written.

[SEAL.] J. C. SHIPMAN, *Dept.*
*Notary Public, Amador Co., Cal.*

[Endorsed as follows:] See Affidavit. Citation. In the matter of the application of Hall McAllister to pre-empt Summit Quartz Mine, Sec. T. 6 N. R. 11 E. D. S. Appm. filed Feby. 7th, 1871. Settlement claimed — I hereby accept service of the within Citation, this — day of — 187-, and waive further notice.

United States Land Office.

SACRAMENTO, CALIFORNIA, *July 6th*, 1872.

To Hall McAllister and to all whom it may concern:

Whereas, You filed your application in the U. S. Land Office, alleging land in NW ¼ of SW quarter of Section 8, in Township 6 North, Range 11 East, to be mineral in character,

And whereas, On the 5th day of July, 1870, the plat of
106 Township 6 North, Range 11 East, was filed in the U. S. Land Office at Sacramento, Cal., wherein the N ½ of SW ¼ and SE ¼ of SW ¼ and NW ¼ of SE Quarter of Section 8 in Township 6 North Range 11 East is returned as mineral in character, and more valuable for mining than for agricultural purposes.

And whereas, Francis M. Morgan (Post Office address Sutter Creek, Cal.) did, on the 27th day of July, A. D. 1870, file in the Register's office of this District his Declaratory Statement claiming the land, and an affidavit alleging that it is agricultural in character, and more valuable for agricultural than for mining purposes;

Now therefore, you will please take notice, that under and by virtue of instructions from the commissioner of the General Land Office, dated May 6th, 1871, we have fixed the 13th day of August, A. D. 1872, at 10 o'clock a.m., at this office, before the Register and Receiver, for the hearing of proofs to determine as to the mineral or agricultural character of said lands. At which time and place you may appear, if you see proper, and offer such proofs as you may have to sustain the return as made of said survey, and the allegations contained in said application.

In witness whereof, we have hereunto set our hands and
107 affixed the seal of this office, the day and year first above written.

[SEAL.]

T. B. McFARLAND, *Register.*
HART FELLOWS, *Receiver.*

Affidavit of Service.

United States Land Office.

SACRAMENTO, CALIFORNIA.

Each of the undersigned being duly sworn, says, each for himself: I am a white citizen of the United States, over the age of twenty-one years; said —— —— served the within notice upon —— ——

by delivering to each of them a true and correct copy thereof on the — day of —— 187—, that after due and diligent search said —— —— was unable to find either of the other within named mineral affiants in said county or district, whom he served, by posting a full true and correct copy of the within notice upon — conspicuous places on each forty acre tract of the within described land, on the — day of —— A. D. 187—, and that said notice was so posted for the space of thirty days, consecutively, from the first day of posting.

Sign —— ——
Sign —— ——

I hereby certify that I consider each of said affiants —— —— is a credible and responsible person, and that the foregoing
108 affidavit was sworn to and subscribed before me this — day of —— —— A. D. 187—.

—— ——,
*Register.*

[Endorsed as follows:]
Mineral Citation. Francis M. Morgan *v.* Hall McAllister.
Mineral Affidavit No.——.

UNITED STATES OF AMERICA:

Sacramento District, California.

LAND OFFICE, SACRAMENTO, CAL., *Oct.* 10, 1871.

Base and Meridian of Mount Diablo.

Citation Before the Register and Receiver of the Land Office at Sacramento.

In the Matter of the Claim of Hall McAllister App. for Patent No. 103 to the Summit Quartz Mine & Surface Ground on SE ¼ of SE ¼ of Sec. 7 and SW ¼ of SW Quarter of Section No. 8, Township No. 6 North, Range No. 11 East.

At the request of the above claimant, and Applicant for Patent No. 103 it is hereby ordered, That The Placerville & S. V. R. R. Company also claiming a portion of the above described
109 tract of land, be and appear before the Register and Receiver, at the Land Office, Sacramento, at 1 o'clock, P. M., on the 16th day of November A. D. 1871, then and there to produce evidence to contest the claim of the said Hall McAllister and offer proofs as to the character of said land or the same will be awarded to him upon the proper proof that he has fully met the requirements of the Mineral Law and Instructions.

Witness our hands and the seal of this office the day and date first above written.

[SEAL.] JOHN G. McCALLUM, *Register.*
HART FELLOWS, *Receiver.*

United States Land Office.

SACRAMENTO, CALIFORNIA.

I, —— ——, a white male citizen of the United States, over the age of twenty-one years, hereby certify that I served the within notice upon —— —— by delivering to each of them a true and correct copy thereof, on the — day of —— 1871, that after due and diligent search I was unable to find the within named —— —— in this county or district, whom I served by posting a full, true and correct copy of the within notice upon —— —— a conspicuous place
110 on that portion of the within described land which is claimed by said adverse claimant on the — day of —— A. D. 1871, and that said notice was so posted for the space of thirty days, consecutively, from the first day of posting.

—— —— [L. S.]

I hereby certify that I consider said affiant —— —— is a credible and respectable person, and that the foregoing affidavit was sworn and subscribed to before me this — day of —— A. D. 1871.

—— —— *Register.*

[Endorsed as follows:]

*Citation.*

In the matter of the application of Hall McAllister to Summit Quartz Mine Sec. — T. 6 N. — R. 11 Appn. Filed Feby. 7th. 1871. Settlement Claimed.

I hereby accept service of the within Citation, this 12 day of Oct. 1871, and waive further notice.

B. B. REDDEN,
*Atty. for S. & V R R Co.*

*Abandonment of Pre-emption Claim.*

To the Register of the United States Land Office at Sacramento, California.

SIR: I hereby give you notice, that whereas, I did on the
111 27th day of July A. D. 1870, file in your office my Declaratory Statement, No. 1368 claiming right of pre-emption to the N ½ of SW ¼ and SE ¼ & NW ¼ of SE Quarter of Section 8 T. 6 N., R. 11 E., Mount Diablo Meridian.

I do hereby declare that I have abandoned the same so far as it conflicts with Application No. 103 for Patent to Mining Claim by Hall McAllister in W ½ of SW quarter section 8, Township 6 N. Range 11 E., the land above described, and I hereby request that my said Pre-emption Claim 1368 may be cancelled on the records and files of your Office, as to the land hereby abandoned.

In witness whereof, I have hereunto set my hand and seal, at Sacramento, this 13th day of August A. D. 1872.

FRANCIS MADISON MORGAN [SEAL.]

Subscribed and declared to before me, this 13th day of August, A. D. 1872.

T. B. McFARLAND, *Register.*

County Clerk in and for —— County, California.

STATE OF CALIFORNIA, *County of* ——.

On this — day of ——, A. D. 187—, before me, County
112 Clerk in and for said county, personally appeared —— —— personally well known to me, and known to me to be the individual described in and who executed the within Declaration of Abandonment of Pre-emption Cliam No. ——, and the said —— —— acknowledged to me that he executed the said Declaration of Abandonment freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at —— the day and year aforesaid.

—— ——.

(Endorsed on back as follows:)

No. 1368. Abandonment of Pre-emption Claim of Francis M. Morgan to Summit Quartz Mine Section 8, T. 6 N., R. 11 E. Dated August 13th, 1872.

Filed August 13th, 1872.

—— ——, *Register.*

U. S. LAND OFFICE,

SACRAMENTO, CAL., *Sept. 14th,* 1872.

I hereby certify the foregoing to be a true and correct copy of an Abandonment on file in this Office of Francis Madison Morgan.

T. B. McFARLAND, *Register.*

113 *Abandonment of Pre-emption Claim.*

To the Register of the United States Land Office at Sacramento, California.

SIR: I hereby give notice, that whereas, I did on the Twenty Seventh day of July, A. D. 1870, file in your Office my Declaratory

Statement, No. 1369, claiming right of pre-emption to the South West quarter of the South West quarter of Sec. Eight the West half of the North West quarter and the North East quarter of the North West quarter of Section Seventeen (17) T. Six N., R. Eleven E. Mount Diablo Meridian.

I do hereby declare that I have abandoned the same so far as it affects all that portion claimed and applied for by the Summit Mining Company on the South West quarter of the South West quarter section eight, Township 6 N. North Range Eleven E. of the land above described, and I hereby request that my said Pre-emption Claim No. 1369 may be canceled on the records and files of your Office, as to the lands hereby abandoned.

In witness whereof, I have hereunto set my hand and seal,
114 at Sacramento, the 15th day of November, A. D. 1871.

JOHME
JOHN S. TANNER [SEAL].

Subscribed and declared to before me, this 15th day of November, A. D. 1871.

HART FELLOWS, *Receiver.*

County Clerk in and for —— County, California.

STATE OF CALIFORNIA, *County of Sacramento.*

On this 15th day of November, A. D. 1871, before me, County Clerk in and for said county, personally appeared John S. Tanner personally well known to me, and known to me to be the individual described in and who executed the within Declaration of Abandonment of Pre-emption Claim No. 1369, and the said John S. Tanner acknowledged to me that he executed the said Declaration of Abandonment freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, at ——, the day and year aforesaid.

—— ——.

(Endorsed as follows:) No. 1369. Abandonment of
115 preemption claim of John S. Tanner to SW ¼ of SW ¼ Sec. 8 & W. ½ of NW ¼ Section 17, T. 6 N., R. 11 E. Dated Nov. 16th, 1871. Filed Nov. 16th, 1871.

—— ——, *Register.*

*Register's Certificate to United States Surveyor General.*

U. S. Land Office, Sacramento, Cal.

OCT. 30TH, 1871.

In Relation to Application No. 103 of Hall McAllister for Patent to a Quartz Gold Mining Claim, Situated in Amador County, California.

I hereby certify that the records and files of this office show:

First. That the above application No. 103 for a patent to said mining claim, together with a copy of the diagram and notice thereof, were filed in this office on the 7th day of February, 1871.

Second. That on the same day the copy of said notice and diagram were duly posted in this office, and remained so posted for ninety consecutive days.

Third. That said notice and diagram were duly posted on said claim on the 31st day of January, 1871, and remained so
116 posted for ninety consecutive days.

Fourth. That upon the order of the Register of this office a copy of said notice was duly published in the "Amador Weekly Ledger" for said period of ninety days, the same being a newspaper published at Jackson in Amador County, State aforesaid.

Fifth. That no claims exists against the United States Government for the cost of such publication, all claim therefor having been waived by an agreement duly filed with said application.

Sixth. And I further certify that no adverse mining claim to any portion of said mining claim has been filed in this office

Being in Sections 7 & 8 Tp. 6 N. R. 11 E. Mt. D. B. & M.

In witness whereof, I have hereunto set my hand and official seal, the day and year first above written.

[SEAL.] JOHN G. McCALLUM, *Register.*

(Endorsed as follows:) Register's Certificate to U. S. Surv. Gen'l. Issued and filed Oct. 30th 1871.

STATE OF CALIFORNIA, *County of Amador, ss:*

117 Allan Tibbitts being duly sworn and says he resides in Amador County, California, and within one mile from the Summit Mine, and in what is known as the Sutter Creek Mining District, and has so resided since the month of August, 1851. Deponent says he is a miner, and has been engaged in mining in said district during the past twenty years; that he is well acquainted with the rules and customs of the miners in said district governing the location of mining claims, the number of feet that can be located and held on a vein or lode, and the amount of surface ground usually held for surface working. Deponent says that each claim may

consist of one hundred twenty feet on a vein or lode, including all the dips, angles and variations of the vein, the discoverer being entitled to one claim of one hundred twenty feet additional for discovery. Deponent says that it now is and has heretofore been the custom in said district for persons claiming or working quartz mines or lodes to claim and hold as much surface along and adjoining the vein or lode as they may desire for working or other purposes, provided the same does not conflict with an older or better right. Deponent says that he is well acquainted with the claim known as the Summit Mine; that he has worked on the vein or lode claimed and worked by the said Summit Mining Company, and that said vein or
118 lode is in the said Sutter Creek Mining District, and County of Amador, State of California, and contains but one known vein or lode so far as the same has been developed and so far as the surface or outcroppings indicate, and that from personal inspection and examination made by deponent, of the surface, veins and walls, it is the belief of this deponent that no other vein or lode exists within said surface ground except the single one claimed as the Summit vein or lode. Deponent further says that applicant and his grantors have erected hoisting works, machinery and other buildings on said mine, and sunk shafts and run drifts therein, and expended in money and labor, at least to the value of eighty thousand dollars; that the vein and surface ground applied for herein are correctly described and set forth in the notice and diagram on file herein, true and correct copies of which were posted on said claim (and there seen by deponent); that the surface ground asked for in said application is necessary for the use and working of said mine.

ALLEN TIBBITS.

Subscribed and sworn to before me this 23 day of April, A. D. 1872.

[SEAL.] JOHN KEYES,
*Notary Public, Amador Co., Cala.*

119 (Endorsed as follows:)

No. 103. Affidavit of Allen Tibbits as to labor and improvements and mining customs. Filed April 25th, 1872.

STATE OF CALIFORNIA, *County of Amador, ss:*

James Morgan, being first duly sworn on his oath says: I am a citizen of the United States, 44 years of age. I reside about two miles from the Summit Mining claim, in Amador County, State of California; I am one of the owners and superintendent of the Oneida Quartz Mining Claim, which is located about two miles from the said Summit Mining Claim, for which said Oneida Mining Claim a United States patent was recently issued and delivered to the company owning the same; I have been engaged in quartz mining in the vicinity of said mining claims for more than three years last past, and have been superintendent of said Oneida Mine for three years last past;

I have from time to time visited and familiarized myself with many of the numerous quartz mines in the vicinity of the Summit mine aforenamed, and have examined the vein or lode of said Summit mine together with the side walls, shafts and excavations, and said mine contains but one known vein or lode so far as the same as
120 has been developed, and, that, to the best knowledge and belief of deponent, from personal exmination and inspection of the surface ground claimed by said Summit Mining Company, no other vein or lode exists within said surface ground, except the said Summit Mine. Deponent further says that the said Summit Mining Company have erected at said mine, and within the lands claimed by them, hoisting works, shafts and several buildings for the use and benefit of the same, which together with labor and other expenditures, have cost twenty thousand dollars. Deponent further says that he has been down in the shafts sunk in said Summit mine, and has thoroughly inspected and examined the same.

JAS. MORGAN.

Sworn and subscribed to before me this eighth day of April, A. D. 1872.

[SEAL.] THOS. DUNLAP,
*Notary Public, Amador Co., Cala.*

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

Hall McAllister being duly sworn deposes and testifies as follows: I am 45 years of age and reside in the city and county of San Francisco, State of California, and am the applicant herein. I am
121 a native born citizen of the United States, and have resided in said city of San Francisco for 22 years last past. Affiant further says that the mining claim herein applied for, known as the Summit Mine, is correctly described in the notice and diagram filed herein, that he, affiant and applicant is now in the possession and occupancy of said claim, and that he and his grantors have held and worked the said claim for five years last past, and that he, applicant, has held and worked the same in conformity with the mining laws, rules and regulations of said Sutter Creek Mining District, wherein it is located, for more than two years last past, the period equal to the time prescribed by the Statutes of Limitations for Mining Claims of said State of California, continuously. That he, applicant, has expended in actual labor and improvements in developing said mining claim, by sinking shafts, running drifts, erecting hoisting works, machinery and other necessary structures, not less than fifty thousand dollars.

Affiant further says that he is in possession of said mining claim by purchase, true and certified copies of the deeds of purchase being herewith presented, and that he knows of no adverse claim, either

mineral or agricultural, to the possession of the mining claim herein applied for.

HALL McALLISTER.

122 Subscribed and sworn to before me this 17th day of April, A. D. 1872.

[SEAL.] SAM'L HERMAN,
*Notary Public.*

(Endorsed as follows:) No. 10—Affidavit of Citizenship of Hall McAllister and as to ownership of claim. Filed April 19th, 1872.

In the Matter of the Application for a U. S. Patent to the Summit Mine, before the Register and Receiver of the U. S. Land Office, Sacramento District, California.

In the petition and application filed herein, reference is made to deeds to said mine, from the grantors of said applicant, but inasmuch as said deeds showing the mesne conveyances would make the record somewhat voluminous and serve no practical, equitable or legal purpose, it has been deemed advisable to supply this character of proof by affidavits of possession reaching beyond the Statutes of Limitations, and reference is therefore made to these proofs consisting of the affidavits of Hall McAllister, the applicant, and John A. Eagan, Allan Tibbitts, Jesse B. Maxey and James Morgan, as to the possession, amount of money and labor expended; and as to
123 the mining rules, regulations and customs of miners in said Mining District; also to the affidavit of Wm. Neely Johnson, showing that no printed or written rules and regulations, or miners' customs can be found of record in said district; and that said rules and regulations must be established by oral proof. This memorandum is asked to be taken and considered as a part of the application and petition heretofore filed herein, as explanatory thereof.

HALL McALLISTER, *Applt.*,
By JOHNSON & SEVERANCE, *His Att'ys.*

STATE OF CALIFORNIA, *County of Sacramento, ss:*

Wm. Neely Johnson, being first duly sworn on his oath says that he is forty-one years of age, and one of the attorneys for the applicant in this case; that in his professional duties he has examined many witnesses, practical miners, in the Sutter Creek Mining District, wherein the Summit Mine claimed by Hall McAllister is located, and has had frequent occasion to examine the records of the County Recorder of Amador County, in which said claim is located, and has applied to one C. K. Johnson, who was many years ago the mining recorder of said Sutter Creek Mining District; and affiant says that

neither of said recorders could furnish him with either a writ-
124 ten or printed copy of the mining rules of said Mining District, as originally (many years ago) adopted; that said rules, as this affiant has been informed and verily believes, are now, and have been, for eight or ten years past disregarded, and that the customs of said Mining District are now, and have been, for some eight or ten years past, such as are stated in the affidavits of practical miners filed as proofs herein, and no rules have been adopted in said district to the best knowledge and information of this affiant up to this date.

WM. NEELY JOHNSON.

Subscribed and sworn to before me this 29th day of August, A. D. 1872.

[SEAL.] MATT F. JOHNSON,
*Notary Public, Sacramento Co., Cal.*

(Endorsed as follows:) No. 103. Affidavit of Wm. Neely Johnson as evidence of title, etc. Filed Aug. 29th, 1872.

1872.

*Decision.*

United States Land Office.

SACRAMENTO, CAL., *October 11th*, 1872.

In the matter of the application of Hall McAllister for a patent to a Quartz Gold mining claim situated in the Sutter Creek Mining
125 District, County of Amador, and State of California, on surveyed land, being Lot No. 51 in the S. ½ of Sections 7 & 8, Township 6 North, Range 11 East, Mount Diablo Base and Meridian. Application No. 103.

The records and files of this office show:

First.—That the above application No. 103, for patent to said mining claim, together with a copy of the diagram and notice thereof, were filed in this office on the 7th day of February, 1871.

Second.—That on the 7th day of February, 1871, a copy of said diagram and notice were duly posted in this office, and remained so posted for ninety consecutive days.

Third.—That said notice and diagram were duly posted on said claim on the 31st day of January, 1871, and remained so posted for ninety consecutive days.

Fourth.—That upon the order of the Register of this office a copy of said notice was duly published in the "Amador Weekly Ledger" for said period of ninety days, the same being a newspaper published at Jackson, in Amador County, State aforesaid, being nearest the location of the mine.

Fifth.—That no claim exists against the United States Government for the cost of such publication, all claim therefor having been waived by an agreement duly filed with said application.

126 & 127 Sixth.—That no adverse or opposing claim to any portion of said mining claim exists on the records and files of this office.

Seventh.—That Hall McAllister, the applicant herein, is a native born citizen of the United States.

Eighth.—That said applicant is in the possession of said mining claim by purchase and has been in the peaceable, uninterrupted, and continuous possession of the above described mining claim for over two years last past.

Ninth.—That said mining claim was located on or about the — day of —— —— 187 .

Tenth.—That said applicants have expended in actual labor and improvements on said mining claim an amount of not less than one thousand dollars, namely: about twenty thousand ($20,000.00) dollars.

Eleventh.—That said applicants have complied with the requirements of the acts and regulations in such cases provided.

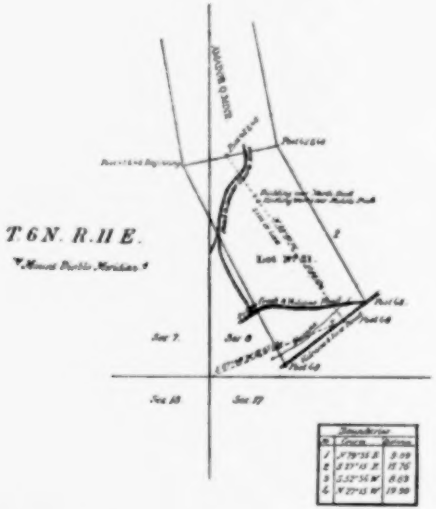
*Conclusion.*

In view of the foregoing facts, we are of the opinion that the said applicant should be permitted to enter and pay for said quartz gold mining claim, and receive a patent therefor from the United

129 States, as provided in the Acts of Congress of July 26th, 1866, and the Act amendatory thereof of July 9th, 1870.

T. B. McFARLAND, *Register.*
HART FELLOWS, *Receiver.*

(Here follows diagram marked p. 128.)




# PLAT
## OF THE
# SUMMIT QUARTZ MINE
## AMADOR COUNTY, CALIFORNIA.

*claimed by*

*Hull McAllister*

*surveyed by*

William L. Wilson, U.S. Dep. Surv.

*January 1872.*

*Containing 15 Lin. Acres*

*Made 5 Jan. to 9 inclu.*

*Var. 16° 14 East.*

The fieldnotes of the survey of the Summit Gold Quartz Mining Claim, from which this plat has been made, have been examined and approved, and are on file in this Office, and I hereby certify that the lode claimed is gold bearing and that the value of labor and improvements thereon is not less than one thousand dollars as shown by the report of the Deputy Surveyor and the testimony of two witnesses, and I further certify that this claim is not embraced within the boundaries of any other claim, nor does this claim include within its boundaries any portion of another claim.

U.S. Surveyor General's Office
San Francisco, California
June 4th 1872.

J. R. Hardenbergh
U.S. Surv. Gen'l Calif.

No. 447.
C. C. Min. Co. Calif.
C. C. Min. Co.
p 128

U. S. Land Office.

SACRAMENTO, CAL. *Oct. 16th*, 1872.

Hon. Comr. of the Genl. Land Office, Washington, D. C.

SIR: I have the honor to transmit herewith the proofs and papers in the Application for Patent No. 103 of Hall McAllister to the Summit Quartz Mine Cash Entry No. 118.

Together with the joint opinion of the Register and Receiver therein.

Also the Receiver's receipt and the Register's Certificate of purchase.

Very respectfully T. B. McFARLAND, *Register.*

[Endorsed as follows:]

U. S. Land Office, Sacramento, Cal., October 18th, 1872. Register transmits herewith proofs and papers in Mineral Cash Entry No. 118 by Hall McAllister

130 W. E. DOWNS, sworn on behalf of plaintiff, testified as follows:

I am now and have been for fifteen years County Surveyor of Amador County, mostly engaged in mining surveying; have surveyed all the principal mines around Jackson and Sutter Creek; I know the property in controversy; have surveyed it and the underground workings. The line XY' represents the lode line; the lines 1 2, 2 3, 3 4 and 4 1 represent the exterior boundary lines. I made this map (referring to map marked Plaintiff's Exhibit 3) from field notes obtained from the Surveyor-General's office; it shows the underground workings. The lines connecting the letters A and B marked the 1250, 1350, 1500, 1600, 1700 levels. The shaft is an inclined shaft. The inclination of it from the horizontal is 71½ degrees. The first crosscut is at 112 feet measured on the incline; it is east 110 feet and there encounters a vein. There is another cross cut at 463 feet. At 489 feet the shaft comes against the hanging wall. There is a cross cut east on the 700 and 900 foot level. I have surveyed the 1250, the 1350, the 1500, the 1600 and 1700 levels, and they are correctly delineated on that map (Plaintiff's Exhibit 3). The pitch of the shaft is 9½ inches horizontal to 4 feet perpendicular.

131 At 412 feet down the shaft, it is 310 17/100 from the vertical line on Exhibit 4. At 524 76/100 feet on the incline, it is 165 89/100 feet from the vertical line. Station No. 4 is 424 76/100 feet on the incline and it is 165 89/100 feet from the vertical line. At the 700 foot level, it is 122 15/100 feet from the vertical line. At the 900 foot station it is 65 78/100 feet. At 1065 feet, it is 12 87/100 feet to the vertical line. The shaft crosses the vertical line at 1094 75/100 feet.

Referring to Exhibit 3, that is a correct representation as described in the patent. The vertical line in Exhibit 4 is a line drawn down

vertically, down through the east side lines of the Central Eureka Mine and the west line of the Toman Ranch. It is almost precisely 340 feet from the collar of the shaft. The shaft follows the hanging wall and you can see the hanging wall all the way from the 489 foot station. I made Exhibit No. 3 from the field notes I obtained from the Surveyor-General's office. I found the mound at the common corner of Sections 7, 8, 17 and 18. I found a bottle in the mound. I did not find the post marked 42 and 48; I did find the pine tree which was the witness tree to that corner. The map represents the land described in the patent.

Plaintiff here introduced a number of witnesses, who testified that they had examined the mining property of the plaintiff, de-
132 scribed in the complaint, and the underground workings thereof, and that there was a continuous vein or ledge, with a smooth continuous hanging wall on the east thereof, extending from the surface of plaintiff's mining ground at a point a short distance east of the shaft as delineated on Exhibit A, and being about the same as the lode line on Exhibit A, and extending downward to the depth of 2000 feet, and being as far down as the shaft at present extends. Some of the witnesses testified that the hanging wall of the ledge was the smoothest and most uniform hanging wall during its entire course that they had ever seen in any mine, and the same witnesses testified to a large experience in mining upon what is known as the "Mother Lode." What is known as the "Mother Lode" is a vein of mineralized rock extending across Amador County, upon which are located many mines. They also testified that the vein or ledge of the plaintiff is a part of the "Mother Lode" extending into the mines adjoining on the north and south. They further testified that the hanging wall of the vein was so smooth and uniform in its direction and pitch that it was used as the hanging wall of the shaft for working the mine. They also testified to the extent of the workings of the ledge both north and south of the shaft. They further testified that said vein or ledge had its apex within the surface boundaries of plaintiff's mine and said apex follows and is substantially the lode line as indicated on "Exhibit 3."

Plaintiff rested.

Counsel for Tomans then moved the Court for a non-suit upon the following grounds:

I. That the evidence does not show that the plaintiff at the
133 time of the commencement of this action was the owner of or had any interest in the property involved in this action.

II. That it is admitted by the pleadings that on the 31st day of December, 1898, and before the commencement of this action the plaintiff made, executed and delivered to the defendant a deed of all the property in controversy.

III. That the answer of defendant Toman set out a deed in *haec verba* executed by the plaintiff to Toman prior to the commencement

of this action. The genuineness and execution of such deed has not been denied by the plaintiff under Section 448 of the Code of Civil Procedure.

"The COURT: A motion for non-suit upon four grounds were presented to the Court before adjournment, which grounds were fully specified in the motion, based upon certain propositions. The first one: That the pleadings do not deny or raise the issue of title. I have examined the pleadings and am satisfied from that examination that the admission of title in the plaintiff's in the ground known as the Central Eureka Mine is sufficient for the purposes of a non-suit. Upon that ground the motion will be denied.

The second ground is that it is admitted by the pleadings that on the 31st day of December, 1898, or before the commencement
134 of this action the plaintiffs made, executed and delivered to the defendants a deed of all the property in controversy.

It seems to me that the proposition raised on this point as to the admission, execution and delivery of the deed, do not under Section 448 of the Code of Civil Procedure quoted by counsel go to the extent of admitting the due execution and delivery of a mining deed, or rather I should say, of a deed of a mining corporation, of its property. The ratification as I take it does not merely affect the execution of the delivery of the deed by the corporation or the proper officers of the corporation, and the resolution of its board of directors, but goes beyond to the ratification of the act itself.

The statute provides what must be done to constitute a ratification of the acts of the board of directors of a corporation in executing a deed or rather conveying any property of a mining corporation or purchasing any new property owned by the corporation. The object and purpose of this act being to protect the stockholders of a corporation. The corporation through its board of directors can buy no additional property any more than it can sell any portion of its property without the ratification of the acts of the board of directors. The statute does not go as I said before to the due execution of the
135 conveyance itself, and the admission under Section 448 would only apply to this deed to the extent as to whether it was properly executed or not within the provisions of that statute; that beyond that and in addition to that a ratification by the stockholders has to be shown.

Now this is attacked upon the ground that it is unconstitutional by the defendants. They claim that the law applicable to the ratification by the stockholders of a mining corporation is special legislation within the meaning of the law, and therefore void, citing authority on that point a decision of our Supreme Court in the 127 California, which has held that the third section of that Act of 1890 amended in 1897 is unconstitutional. The reason given in the decision for that ruling seems to me apparent upon its face, and it shows why it should not apply perhaps to the other sections of the act. The portion of the decision to which I have reference is as follows: (here the Judge read from the decision in 127 Cal.). In

the other respects it seems to me that there is a decided reason why mining corporations should be classified by themselves. That reason is that the primary object and purpose of a mining corporation is the extraction and reduction of minerals, the obtaining of gold therefrom; in other words the conduct of mining operations, and
136 not the purchasing or selling of property as in corporations for profit. Railroad corporations have been mentioned by counsel; their corporate property has a value upon its face, and their business is traffic. A merchandising corporation carries on a business the object of which is traffic and the value of its stock is apparent, but mining corporations have been the object of special enactments to protect the stockholders, and the reason for it is apparent to any one who has ever had any dealings with them from the fact that the value of mining property depends upon the discoveries of mineral made in the mine. These discoveries are made at times when the stockholders of the corporation know nothing about it, frequently they are far away from the place where the mine is located, so that they could obtain no knowledge of such discoveries and a complete transfer of its property might be obtained and frequently has been obtained and the property has passed from their hands into the hands of others contrary to the law of mining corporations in this state and for that reason the special enactment has been made, and for that reason in my judgment it is not class legislation and in no sense obnoxious to the constitution, but it refers to all in the one class of mining corporations and I don't think that the law is unconstitutional in that respect, still I will give
137 counsel an opportunity to test that if they are desirous by reserving their exception and taking it to a higher Court, and upon that ground also the motion will be denied.

Now I see as counsel for plaintiff argues that in addition to the deed set forth in haec verba in the answer of the defendants is an allegation as to the effect of that deed, which for all purposes under our rules of pleading is deemed denied, and it leaves it—as the motion does now rest upon the copy of the deed as set forth and its execution as I understand it admitted by the pleadings, it leaves it then that the defendants in this action attempt to show something from that deed which does not appear upon the face of the deed. It is an ordinary quitclaim deed carrying with it the common conditions that such instruments carry only with the additional clause to show that it is executed by resolution of the corporation, and there is nothing upon the face of the instrument itself, from its language to infer that anything more was passed by it than would be passed by any deed to such a piece of property. It seems to me then that the burden would rest upon the defendants to show that it does convey more than it appears upon its face to convey. For the reasons given the Court will deny the motion for a non-suit.

138 To which ruling the defendants duly excepted.

And the defendants admitted that—

Defendants admitted that the land shown on diagram (referring

to plaintiff's Exhibit 3) was patented to Hall McAllister and by regular mesne conveyances, the title thereto vested in the plaintiff and if any extra lateral right existed in Hall McAllister it was in the plaintiff, unless it was extinguished by, or passed to the Tomans by, the quit claim deed set out in the answer.

The defendants here introduced into evidence a certified copy of the patent record of the Summit Quartz Mine duly certified by the commissioner of the U. S. Land Office, and being similar to the patent record introduced in evidence by the plaintiff and hereinbefore set out.

Defendants here produced a book of the minutes of the Central Eureka Mining Company, which was admitted to be a Minute Book of the corporation plaintiff. Defendants then offered in evidence from page 114—115 the following:

"San Francisco, December 31, 1898.—The Board of Directors of the Central Eureka Mining Company met pursuant to call of
139 President and notices duly served. Present, Directors, De Golia, Gunn, and Grady. Absent, Directors, Keeney and Gilpin. Also Attorney J. J. Richardson. Minutes of last meeting read and on motion the same were ratified and confirmed. Director Grady reported that he had arranged with the Joshua Hendy Machine Works relative to the payment of the overdue note of $1000 as follows, $300.00 and the interest on the $1000 in cash, which had been paid and the note for the balance of the $700 payable March, 1892. The same was on motion ratified and confirmed. Mr. Richardson then stated the condition of the Toman bond and option, and the agreement he had made with the attorney of the Tomans under the former instructions received from the directors, and presented the following resolution as embodying the terms of said agreement.

'Whereas, Eliza A. Toman and James Toman, her husband, and 'the Central Eureka Mining Company have mutually agreed to can- 'cel that certain contract, bearing date October 23rd, 1897, and re- 'corded in the office of the county recorder of Amador County, Cali- 'fornia, in volme "G" of Agreements, page 211, and also that certain 'note for $1000 payable November 15, 1898, and whereas, in con-
'sideration of such cancellation this corporation has agreed to
140 'pay said Tomans the sum of one thousand ($1000) dollars,
'to be paid as follows: two hundred and fifty ($250) dollars, 'cash paid December 24th, 1898; seven hundred and fifty ($750.00) 'dollars on or before May 1st, 1898, to be evidenced by a promissory 'note for that amount which note shall be payable on its face one day 'after date:

'Resolved, that the President and Secretary of this corporation be, 'and they are hereby authorized and directed to make, execute and 'deliver to the said Eliza A. and James Toman on behalf of this cor- 'poration a quit claim deed of all the right, title and interest of the 'corporation in and to the real property described in said contract of 'sale, and particularly described as follows: All that real property

'situated in the County of Amador, State of California, and described
'as that portion of Sections Eight (8) and Seventeen (17) Township
'Six (6) North, Range Eleven (11) East Mt. Diablo Base and Me-
'ridian, lying north of the center of that certain wagon road extend-
'ing between the town of Ione and Volcano, and known as the
'Ione and Volcano Wagon road, and lying east of that certain pat-
'ented mining ground known as the Summit Quartz Mine, and also
'east of that certain patented mining ground known as the Amador
'Consolidated Mine, situate in the County of Amador, State
141 'of California, and also that portion of said Section Eight (8)
'and Seventeen (17) lying north of said wagon road and
'westerly of the westerly line of said Summit Quartz Mine. It is
'further resolved that the President and Secretary of this corpora-
'tion be, and they are hereby authorized and directed to make, ex-
'ecute and deliver to the said Eliza A. and James Toman the note
'of this corporation for seven hundred and fifty ($750) dollars, said
'note to be payable on its face one day after date. (The under-
'standing with said Tomans however being that it shall not be col-
'lected prior to May 1st, 1899, except that in the event that other
'creditors attach said corporation, and that any assessments that be-
'came due on the 2000 shares of stock held by said Tomans shall be
'endorsed on said note.) It is further resolved that the President
'and Secretary, or either of them, be and they are hereby authorized
'and instructed to take such steps as may be necessary in the prem-
'ises, severally or jointly with said Tomans for the purpose of with-
'drawing form the Bank of California, and delivering to the said
'Tomans the papers placed in escrow in said bank and referred to in
'said agreement of October 23, 1897. It is further resolved that the
'President and Secretary of this incorporation be and they are
'hereby authorized to sign, execute and deliver all proper and
142 'necessary papers requisite and necessary to cancel said con-
'tract, and to free the land and title of said Tomans from any
'incumbrance, which resolution was on motion duly seconded unani-
'mously adopted.'"

Whereupon plaintiff objected. We will make the objection now that the authority given to the Board of Directors to execute this deed in question did not authorize the conveyance of any part of the Central Eureka property, that it simply authorized the making of a quitclaim deed of the interests of the Central Eureka Mining Company in that part of the Toman Ranch lying east of the plaintiff's mine, and that the evidence if followed up with the execution of the deed in accordance with the authority here sought to be proven is not for any purpose relevant to this case. It does not show, or tend to show, any right or title in the defendants in this action to that part of the Central Eureka vein, which underlies the Toman rancho; upon the further ground that it is irrelevant, immaterial and incompetent, and upon the further ground that it appears upon the face of the resolution that the object of the deed authorized to be executed by this resolution was to free the Toman land from any lien upon it by rea-

son of any bond t
the plaintiff here
hat had been previously executed by the Tomans to
in.

The Co
143 fendant's
with the p
URT: Let it be formally admitted, marked as de-
exhibit 3. It is admitted subject to the objection
rivilege to make a motion hereafter to strike it out.
offers in evidence paper marked "Exhibit A" for
he words and figures following, to-wit:

Defendant here
identification, in
Whereas, Eliza
parties of the firs
poration, as party
1897, enter into
which, the said pa
second part, and t
parties of the first
California, and f
contract was rec
County, Decembe
211, *et seq.*:
A. Toman and James Toman, her husband, as
t part, and the Central Eureka Mining Co., a cor-
of the second part, did, on the 23rd day of October,
a contract and agreement of sale, by the terms of
rties of the first part agreed to sell to the party of the
he party of the second part agreed to buy from the
part, certain property situated in Amador County,
lly described and set out in said contract, which
orded in the Recorder's Office of said Amador
r 1st, 1897, in Volume G of Agreements at page

And whereas, t
December, 1898,
withdraw from s
nants ther
he parties to said Agreement, on the 23rd day of
or value, mutually agreed to annul and cancel and
aid contract, and all of the obligations and cove-
in:

144 And wh
of Directo
the President and
its corporate act
Eliza A. Toman
all their right, ti
property describe
ereas, in pursuance of such Agreement, the Board
s of said Central Eureka Mining Co. authorized
Secretary of said Corporation, on its behalf, and as
nd deed, to make, execute and deliver to the said
nd James Toman, a Quit Claim Deed, conveying
le and interest of said corporation in and to the
d in said contract:
ch deed has been executed.

And whereas s
Now therefore,
shares of stock i
names, do hereby
rectors and office
annulment of sai
making, executio
James Toman of
we, the undersigned, holders of the number of
the Central Eureka Mining Co. set opposite our
ratify and confirm the acts of the Board of Di-
s of said Corporation in executing the release and
d contract, and do hereby confirm and approve the
n and delivery to the said Eliza A. Toman and
said deed.

| | |
|---|---|
| Wm. R. Thoma | |
| Morris Brinn | 5000 |
| Ray Brinn | 4000 |
| Estell Brinn | 500 |
| Annie E. Allen | 500 |
| Jackson Dennis | 2000 |
| J. E. Bawden | 5000 |
| L. Katz | 1000 |
| 145 F. Canins | 250 |
| G. B. Mi | 250 |
| M. D. Nixon | 500 |
| 9—447 | 1000 |

| | | | |
|---|---|---|---|
| | E. C. Voorheis | 5000 | |
| | John Ross Jr. | 1000 | |
| | J. B. Richardson | 3000 | shares |
| | Henry P. Dalton | 2500 | shares |
| | J. S. Adams | 5000 | " |
| | Lemuel Williams | 1000 | " |
| | Charles R. Root | 1500 | " |
| | Thos. Lindsay | 1800 | " |
| | Harriet L. Nye | 500 | " |
| | Emma M. Nye | 500 | " |
| | Richard Jones | 500 | " |
| | Chas. Wagner | 3700 | " |
| | Chas. D. Bates | 1000 | " |
| | Chas. D. Bates by C. D. Bates Jr. | 1000 | " |
| | Geo. T. Burtchaell | 1000 | " |
| | F. L. Witmore | 2500 | " |
| | I. M. Witmore | 1000 | " |
| | Anna L. Witmore | 100 | |
| | B. T. Sherman | 100 | |
| | W. P. Wheeler | 1500 | |
| | Julia E. Steere | 2000 | |
| | Chas. E. Gillett | 1000 | |
| | W. Gilpin | 2000 | shares |
| | A. F. Guirre | 2000 | " |
| | John H. Grady | 5000 | " |
| | E. B. De Golia | 3000 | |
| 146 | W. A. Van Bokkelin | 34500 | |
| | James W. Keeney, M. D. | 10000 | |
| | G. M. Freeman, M. D. | 1000 | |
| | J. R. Stroud (Pledgee) | 10000 | |
| | Geo. Walcom | 2000 | |
| | Geo. C. Walcom | 250 | |
| | John Tait per Geo. Walcom | 500 | |
| | Florence E. Walcom | 250 | |
| | Val Schmitt | 3000 | |
| | P. Kirchhoffer | 3625 | |
| | G. F. Hanson | 1000 | shs |
| | T. F. Creighton | 3000 | " |
| | Margaret F. Crawford | 1000 | |
| | W. B. Coffey | 1000 | |
| | Mary Coffey | 1000 | |
| | Geo. E. McPherson | 1000 | |
| | C. W. Smith | 18500 | |
| | J. Munnier | 2000 | |
| | John C. & E. Coleman | 43900 | shares |
| | Peter Deane | 2500 | " |
| | Jno. Martin | 4000 | " |
| | Acton H. Clough | 5000 | shares |
| | John H. Dawson | 2250 | |

| | |
|---|---|
| E. d'Artenay | 1000 shares |
| I. H. Folkers | 3000 shares |
| Edward J. Pringle | 5000 |
| R. L. Cheney, Trustee | 700 |
| J. H. Spring | 14000 |
| John R. Tregloan | 3000 |

147 STATE OF CALIFORNIA, *County of Amador, ss:*

On this Seventeenth day of April, in the year one thousand eight hundred and ninety-nine, before me, Jackson Dennis, a Notary Public in and for said Amador County, residing therein, duly commissioned and sworn, personally appeared W. R. Thomas, Morris Brinn, for himself and for Ray Brinn and Estelle Brinn, as their agent; J. E. Bawden, L. Katz for himself and for J. Corinson as his agent, G. B. Vicini, M. D. Nixon, E. C. Voorheis, John Ross, Jr., known to me to be the persons whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand, and affixed my Official Seal, at my office in the said County of Amador, the day and year in this Certificate first above written.

[SEAL.] JACKSON DENNIS,
*Notary Public in and for said Amador County,*
*State of California.*

STATE OF CALIFORNIA, *County of Amador, ss:*

On this Seventeenth day of April, in the year one thousand eight hundred and ninety-nine, before me, W. H. Turner, a Notary Public in and for said Amador County, residing therein, duly com-
148 missioned and sworn, personally appeared Annie E. Allen and Jackson Dennis, known to me to be the persons whose names are subscribed to the within instrument and they acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand, and affixed my official seal, at my office in the said County of Amador, the day and year in this certificate first above written.

[SEAL.] JNO. H. TURNER,
*Notary Public in and for said Amador County,*
*State of California.*

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

On this 11th day of April, in the year one thousand eight hundred and ninety-nine, before me, Mark Lane, a Notary Public, in and for said City and County, residing therein, duly commissioned and sworn, personally appeared R. L. Cheney and J. H. Spring, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Fran-
149 cisco, the day and year in this certificate first above written.

[SEAL.] MARK LANE,

*Notary Public in and for the City and County of San Francisco, State of California.*

Crocker Building, 602 Market St. Tel. Main 1113.

Estate of John Tregloan, by John R. Tregloan, ex..... 5000
Grace S. Tregloan, by John R. Tregloan, attorney..... 1000

I, William A. M. Van Bokkelin, Secretary of the Central Eureka Mining Company, a corporation, do hereby certify that the persons signing the annexed three documents, being the consent of and ratification by the stockholders of the said Central Eureka Mining Company of the act of the Board of Directors in the releasing and annulling of the contract between said Company and Eliza A. and James Toman, dated October 23rd, 1897, and the execution and delivery of a deed to the property referred to in said contract to said Tomans covering eight pages—were at the time of their respective signatures stockholders of record in the Central Eureka Mining Company and that the number shares owned by them in excess of any that
150 may be duplicated is, in the aggregate, equal to and in excess of two-thirds of the entire issued or outstanding capital stock of said corporation which is three hundred and forty-five thousand and five hundred shares and the amount properly signed for being two hundred and forty-four thousand nine hundred and twenty-five shares.

In witness whereof I have hereunto set my hand & the corporate seal this 24th day of April, 1897.

[SEAL.] WM. A. M. VAN BOKKELIN.

(Ten-cent Internal Revenue Stamp, cancelled attached.)

STATE OF CALIFORNIA, *City and County of San Francisco,* ss:

On this 10th day of April, in the year one thousand eight hundred and ninety-nine, before me, Mark Lane, a Notary Public, in and for said city and county, residing therein, duly commissioned and sworn, personally appeared T. F. Creighton, P. Kirschoffer, W. Gilpin, A. F. Guirre, John H. O'Grady, E. B. De Golia, G. F. Hanson, W. A. M. Van Bokkelin, James W. Keeney, G. M. Freeman, J. R. Stroud, Pledgee, George Walcom, George C. Walcom, Florence E. Walcom, John Tait, Val Schmitt, Margaret F. Crawford, W. B. Coffey, Mary Coffey, George E. McPherson, C. W. Smith, J. Munnier, John
151 C. and E. Coleman, Peter Dean, Jno. Martin, Acton H. Clough, John H. Dawson, E. d'Artenay, J. H. Folkers and

Edward J. Pringle, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[SEAL.] MARK LANE,
*Notary Public in and for the City and County of San Francisco, State of California.*

Crocker Building, 602 Market St., Tel. Main 113.

STATE OF CALIFORNIA, *County of Alameda.*

On this eleventh day of April in the year One Thousand Eight Hundred and Ninety-nine, before me, E. Bernstein, a Notary Public in and for said County of Alameda, residing therein, duly commissioned and sworn, personally appeared J. R. Richardson, Henry P. Dalton, J. S. Adams, Lemuel Williams, Charles R. Root, Thomas Lindsay, Harriet L. Nye, Emma M. Nye, Richard Jones, Charles Wagner, Charles D. Bates, C. D. Bates, Jr., George T. Burtchell, J. L. Wetmore, I. M. Wetmore, Anna L. Wetmore, B. T.
152 Sherman, W. P. Wheeler, Julia E. Steere, Charles E. Gillett, known to me to be the persons described in, whose names are subscribed to, and who executed the within instrument, and they severally acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City of Oakland, County of Alameda, the day and year in this certificate first above written.

[SEAL.] E. BERNSTEIN,
*Notary Public in and for said County of Alameda, State of California.*

[Endorsed:] Consent of stockholders to annulment of contract to purchase, made with E. A. and Jas. Toman.

Filed for record at the request of Jas. Toman, May 5th, 1899, at 11 o'clock a. m. and recorded in Vol. "G" of Agreements, page 540, Amador County Records.

D. A. PATTERSON, *County Recorder.*
By —— ——, *Deputy Recorder.*

Central E. M. Co. *vs.* East Central E. M. Co.
Defendant's Exhibit "A" for identification.
Admitted as Defendant's Exhibit No. 4.

Filed October 17th, 1901.

C. L. CULBERT, *Clerk.*
By B. R. BREESE, *Deputy Clerk.*

153 Mr. OLNEY: I do not understand what the purport of this offer is, but we object to it on the ground that it is not a ratification of two-thirds of the stockholders of the Central Eureka Mining Company.

The COURT: The offer must be made for some purpose and that purpose should be presented to the Court at the time of offer.

Mr. OLNEY: We object to the introduction in evidence upon the ground that it is not a ratification of two-thirds of the stockholders of the Central Eureka Mining Company. I will specify the particulars in which the consent is not sufficient. The signatures are all right except those I will specially point out. Two thousand shares of the capital stock of the plaintiff corporation stood of record at the time in the name of George Allen who then was deceased, but the signature of the consent purports to be signed by Annie E. Allen; on the further ground that 500 shares of stock stood in the names of Ray Brinn and Estelle Brinn respectively. There is no acknowledgment as the statute requires of the signature of Ray Brinn and Estelle Brinn. 1000 shares of the stock stood of record in the name of C. D. Bates. C. D. Bates did not sign or acknowledge the ratification but the acknowledgment is by C. D. Bates, Jr. 5000 shares belong to Jackson Dennis, but he did not acknowledge his
154 signature to the ratification and I object to it on that ground. 28000 shares stood of record in the name of W. A. M. Van Bokkelen, trustee, in which he is the owner in his own right of only 4500 shares, and there was no authority for the signing of the ratification by Mr. Van Bokkelen of the other shares. 10,000 shares stood upon record in the name of J. R. Stroud as pledgee, and we object to that signature on the ground that a pledgee of stock has no right to sign any such ratification. 3000 shares stood in the name of J. R. Tregloan, but he did not acknowledge his signature to the ratification. 5000 shares belonged to John Tregloan, deceased, and while John Tregloan claimed the right to sign the name of the estate of John Tregloan to the ratification, he did not acknowledge such signature. 1000 shares stood of record in the name of Grace Tregloan, and the signature purports to be signed by her attorney, but is not acknowledged properly, not showing whether or no he was the attorney. 250 shares belonged to G. Coronson, but he did not acknowledge his signature, and 5000 shares of said stock stood of record as belonging to E. C. Voorheis as trustee, and said consent was signed by E. C. Voorheis as an individual.

I further object to this ratification that the certificate of the
155 Secretary called for by the statute is not attached to this ratification; it has not followed the statute. We further object to the introduction of this paper on the ground that it is irrelevant, immaterial and incompetent; that it purports to ratify the action of the Board of Directors of the plaintiff corporation in a matter which does not affect the property in controversy here in any manner whatever.

WILLIAM A. M. VAN BOKKELEN, sworn on behalf of defendant testified as follows: I had that paper in my possession as Secretary of the corporation. I delivered it to the clerk of the firm of Campbell, Metson & Campbell. The clerk of Mr. Metson brought this paper to me with this form of certificate (pointing to certificate) attached thereto, requesting me to go over the number of shares opposite the names of the different stockholders and find out how much they footed up, and then make the certificate, which I did, copying the certificate as sent by Mr. Metson to me, with the one exception that I found some shares were duplicated in the list, and so I put in a clause "Shares owned by them in excess of any that may be duplicated." That is my signature to the certificate.

At the time I made that certificate the facts stated in the certificate were true.

The signatures, the number of shares opposite to the several names with the exception of such as might be duplicated owing to the difference in dates on which the signatures were made were those standing against the respective names on the stock ledger. As the document had passed into the hands of the attorney of Mr. Toman, and the certificate had been prepared by him I did not investigate any acknowledgments or the rights of the different parties to sign, judging that that had been properly passed upon by the attorneys.

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With the exception of those that were duplicated, and then there were one or two signatures of parties owning stock in the names of other persons, and I deducted them from the list.

Admitted in evidence subject to a motion to strike out.

Defendants then offered in evidence from the Minute Book produced by the plaintiff. Minutes appearing on pages 145, 146, 147, in the words and figures following, to-wit:

"San Francisco, April 14, 1900. The annual meeting of the stockholders of the Central Eureka Mining Company was held at office 320 Sansome street, room 9, at 2 o'clock P. M., pursuant to call of the Board of Directors, and a notice published in the Evening Post a newspaper of general circulation published in San Francisco, for more than fifteen days, and notice is mailed to every stockholder. President Z. T. Gilpin called the meeting to order. He appointed Messrs. J. H. Spring and George Walton committee on proxies. On call of the roll there were found present in person 127,351 shares, represented by proxy 237,881 shares, not represented 33193 shares, total 398,424 shares. Committee on proxies offered the following which was unanimously adopted. Resolved that all proxies now presented be accepted as good for voting unless objected to by any stockholder. The Minutes of the stockholders' meeting of October 24th, 1898, and September 22, 1898, were read and on Motion approved. On motion duly seconded the following was unanimously adopted: Resolved that all transactions and acts of the Board of Directors of this corporation as the same are of record, be and the same are hereby approved, ratified and confirmed."

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Mr. VAN BOKKELEN: 398,424 was the total amount of stock issued by the Central Eureka Mining Company at that time and outstanding.

Plaintiff objected to the introduction of the minutes upon the ground that it is irrelevant, immaterial and incompetent in
158 this case; that the so-called ratification is not a ratification of the action of the Board of Directors taken nearly a year and a half previous to the date of this meeting, and it is not such a ratification as is called for and required by the provisions of the statute, and further that it purports to be a ratification of an action of the Board of Directors of plaintiff corporation touching a proposition that is not involved in this action.

Admitted subject to a motion to strike out.

Defendants then offered a portion of the minutes of the plaintiff of July 21st, 1899, on pages 123-124 as follows:

"The president stated that in an interview with Mr. James Toman it had developed that Mr. Toman claims that the Company has by recent deed conveyed to his wife and himself the triangular piece of land lying between the west boundary of the company's patented claim and the section line—the land acquired from Mrs. Howard. On motion the matter was referred to J. B. Richardson Esq., attorney at law for investigation, and report to the Board. The Secretary reported that he had interviewed Mr. James Toman, relative to removing his fence from the company's ground, and that Mr. Toman
159 had promised to remove the same before the first day of September as he could not get the necessary posts for a new fence before that time."

Plaintiff objected on the ground that it was entirely immaterial and irrelevant, and having no relation to this matter in controversy.

The COURT: Let it take the course of the other offers. Let it be admitted subject to a motion to strike out.

Plaintiff then offered and read in evidence a portion of the minutes of the corporation meeting held May 22nd, 1899, on page 122 of the minute book.

"Whereas it appears that one James Toman is occupying a portion of the land belonging to this Company, and has placed a fence around the same, therefore be it resolved that the Secretary be instructed to notify said Toman to vacate said land, and to remove said fence and all personal property belonging to him (Toman) off of the land of this Company, on or before the first day of August, 1899; if said Toman shall refuse or neglect to remove said fence and vacate said land before August the first A. D., 1899, that the Secretary shall cause such action to be taken towards the removing of said fence and causing said Toman to cease the occupancy of said land, as he may be advised to take in said matter by the attorney of the Company."

160 Plaintiffs objected as immaterial, irrelevant and incompetent, having no connection whatever with the matters in controversy in this action.

W. E. Downs, sworn on behalf of defendant testified as follows: I remember removing a fence from the ground of the Summit Quartz Mine property. I think it commenced at a point "A" on plaintiff's exhibit 3 and ended at point "B," then it ran in a direct line pretty nearly straight from "A" to "B." It was torn down and another fence built from point "A" to "3" and from "3" to the letter "C" in the word "Central."

The Court: That is on the east side line of the Central Eureka Mine?

A. Yes, on the east side line. The area between a line drawn from "3" to "A" to "B" to "D" was included in the Toman inclosure prior to the building of the fence.

Defendant then offered in evidence a deed in the words and figures following, to wit:

"This indenture, made this 31st day of December, A. D. one thousand eight hundred and ninety-eight, between the Central Eureka Mining Company (a corporation), the party of the first part,
161 and Eliza A. Toman and James Toman, her husband, of the County of Amador, State of California, the parties of the second part.

Witnesseth: That the said party of the first part, for and in consideration of the sum of ten dollars, gold coin of the United States of America, to it in hand paid by the parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and forever quitclaimed, and by these presents does remise, release and forever quitclaim unto the said parties of the second part, and to their heirs and assigns forever.

All those certain lots, pieces, or parcels of land situate, lying and being in the said County of Amador, State of California, and bounded and particularly described as follows, to wit:

First. That portion of Sections Eight (8) and Seventeen (17) Township Six (6) North, Range Eleven (11) East, Mount Diablo Base and Meridian, lying north of the center of that certain wagon road extending between the town of Ione and Volcano and known as the Ione and Volcano wagon road, and lying east of that certain patented mining ground known as the Summit Quartz Mine, and
162 also east of that certain patented mining ground known as the Amador Consolidated Mine.

Second. Commencing at the southwest corner of that certain patented claim known as the Summit Quartz Mine, situated in Township Six (6) North Range Eleven (11) East, Mount Diablo Meridian, in the County of Amador, State of California, said southwest corner being at or near the middle of that certain wagon road known as the Ione and Volcano wagon road, thence running in a southwesterly direction along the center of said Ione and Volcano wagon road a distance of eight and one-half chains more or less to the intersection of the section line between Sections Seventeen (17) and Eighteen (18),

in said Township, thence northerly along said section line extended a distance of eighteen and one-half chains more or less, to its intersection with the western boundary line of said Summit Quartz Mine, thence south along said boundary line, twenty-seven degrees, fifteen minutes east, fifteen chains more or less to the point of beginning; being a fractional portion of Lot Four (4) in S. W. one-quarter of said Section Eight (8) and a fractional portion of the N. W. one-quarter of the N. W. one-quarter of Section Seventeen (17) all of the land above described lying westerly of said Summit Quartz
163 Mine and northerly of the middle of said Ione and Volcano Road.

And does hereby remise and release unto the parties of the second part all claims and obligations, bonds and contracts, or assignments of either made by Eliza A. Toman or James Toman to said Central Eureka Mining Company, a corporation, or to any of its predecessors in interest, grantors or assignors, and does specially remise and quitclaim unto the said Eliza A. Toman and James Toman, and does hereby specially release them and each of them of and from any covenant or agreement contained in that certain agreement made and entered into between Eliza A. Toman and James Toman, and the Central Eureka Mining Company, a corporation, under date October 23rd, 1897, which said agreement was recorded at page 211 *et seq.*, Amador County Records, State of California.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances.

164 To have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

This deed is made pursuant to the authority and resolution of the Board of Directors of party of the first part, which resolution was adopted by said party of the first part at a meeting thereof, held December 31st, 1898.

In witness whereof, the said party of the first part hereunto set its hand and seal the day and year first above written.

THE CENTRAL EUREKA MINING COMPANY.
By Z. T. GILPIN, *President.*
By WM. A. M. VAN BOKKELEN, *Secretary.*

Signed, sealed and delivered in the presence of
J. B. RICHARDSON.
[SEAL OF COMPANY.]

STATE OF CALIFORNIA, *County of Alameda, ss:*

On this 25th day of March in the year of our Lord one thousand eight hundred and ninety-nine, before me, J. B. Richardson, a Notary Public in and for said county and state residing therein, duly commissioned and sworn, personally appeared Z. T. Gilpin, known to me to be the President and W. A. M. Van Bokkelen,
165 known to me to be the Secretary of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.] J. B. RICHARDSON,
*Notary Public in and for Alameda Co., Cal.*

(Endorsed:) "Deed Central Eureka Mining Company to Eliza A. Toman and James Toman—Dated, December 31st, 1898.

Filed for record at the request of Jas. Toman May 5th, 1899, at 5 min. past 11 o'clock a. m. and recorded in Vol. "17" of Deeds page 643—Amador County Records.

D. A. PATTERSON,
*County Recorder.*

——— ———,
*Deputy Recorder.*

By fee $1.50."

Plaintiff objected to the introduction of this deed upon the following grounds. We object to the reception of this deed in evidence upon the ground that it appears from the face of the deed that it is irrelevant and immaterial to any controversy in this action, upon the further ground that it appears from the face of the deed that
166 none of the property described in the complaint in this action involved in this controversy is by any possible construction of this deed embraced within the property conveyed by the same; that the deed does not show or tend to show title in the defendants, or either of them, to any part of the vein in its downward course which has its apex with the mining ground of the Central Eureka Mining Company the plaintiff herein, in other words, the Central Eureka Mine embraces the surface area delineated upon the map of the plaintiff, marked Plaintiff's Ex. No. 3, heretofore introduced in evidence, and that the Central Eureka Mining Company is the owner of the vein or any vein which has its apex in its mining ground although in its downward course shall pass under the Toman Rancho, and that it appears upon the face of the instrument itself that no part of the surface of the Central Eureka Mining Company's ground, nor any vein which has its apex within said ground is conveyed by the said instrument.

Mr. OLNEY: We make the further objection that it does not

appear that the said instrument was properly ratified by at least ⅔ of the stockholders of the said corporation plaintiff, and that such ratification was not made as required by law in order to give validity to this deed.

The COURT: The decisions seem to be clear upon the point,
167 that a patent of the United States to a mining ground has as its object the granting of a vein, and sufficient surface ground for the convenient working thereof. That is the extent of it. The vein is granted no matter where it runs; that is the general supposition, and the holding of the surface ground is all the holding necessary. Now this deed does not upon its face purport to convey any portion of the mining ground of the Central Eureka Mining Company. It purports to convey by quit-claim deed the lands described on the face of the deed which lie east of the Central Eureka Mine, or the Summit Quartz Mine as patented. In addition to this it purports to release the plaintiff here from the obligation of contracts entered into between it and Eliza A. Toman and James Toman. That is all there is to it. *There is nothing in the deed that is not plain and clear. There is nothing in the language of it that I can find that is at all ambiguous, which would entitle the Court to admit outside evidence to explain its terms.* Of course that being so they could not be varied by such evidence, and that being the case, it seems to me that the court has no right to introduce in evidence a paper—permitting it to be introduced into evidence, that upon its face bears no relation to the case at all—to the property in controversy in this case. As I
168 have stated last night I have but one feeling in these matters where the Supreme Court has a chance to rectify the error I may make and that is a feeling of satisfaction that that is the case; that whatever errors if any that I may make, the parties have their remedy by an appeal. But I do not see looking at it from this standpoint and in the light of the reasons that I have given why I should encumber the record with it. I see no reason why I should admit this deed under the evidence before taking in consideration all the evidence that is in the case which leads up to it. The objection to the introduction of the deed will therefore be sustained.

To which ruling of the Court the defendant then and there excepted.

Thereupon the defendant rested.

The defendants specify the following particulars in which the evidence is insufficient to justify the decision:

I. The evidence is insufficient to justify the Finding: That "On the 25th day of November, 1873, the United States of America, by its letters patent, granted to one Hall McAllister all said Summit Quartz Mine hereinabove described, with the exclusive right of pos-
169 session and enjoyment of all the land included within the exterior lines as above described, and of 1165.56 linear feet of the said Summit Quartz Mine, vein, ledge, lode or deposit, for such length throughout its entire depth, although it enters the land adjoining, and also of all other veins, lodes, ledges or deposits

throughout their entire depth, the tops or apices of which lie inside the exterior boundary lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges or deposits in their downward course may so far depart from the perpendicular as to extend outside the vertical side lines of said survey, but limiting the right of possession to such outside parts of said veins or ledges within such portions thereof as lie between vertical planes drawn downward through the end lines of above described premises continued in their own direction," in this that the evidence shows that the end lines of the Summit Quartz Mine as patented to Hall McAllister were not parallel, and the evidence further shows that the patentee under the patent to the Summit Quartz Mine had no right to pursue any vein lode, ledge or deposit beyond the exterior boundary lines of said Summit Quartz Mine extended downward vertically.

II. The evidence is insufficient to justify the finding that by the letters patent to the Summit Quartz Mine issued to Hall Mc-
170 Allister there was granted to him the right to pursue, or the right to any vein beyond the exterior boundary line of said Summit Quartz Mine extended downward vertically, in this: That the evidence shows that the end lines of said Summit Quartz Mine were not parallel, and that said patent was issued under the laws of the United States adopted May 10th, 1872, to-wit: "An act to promote the development of the mining resources of the United States," which act required that the end lines should be parallel.

III. The evidence is insufficient to justify the finding that the patent to the Summit Quartz Mine was issued in pursuance of and in conformity with the Revised Statutes of the United States, Title 32, Chapter VI, in this: That the evidence shows that the said patent to Hall McAllister was issued under and in pursuance of the Act approved May, 1872, entitled, "An Act to promote the development of the mining resources of the United States."

IV. The evidence is insufficient to sustain the finding that the patent of the Summit Quartz Mine issued to Hall McAllister was issued upon application made by him on the 7th day of February, 1871, in this: That the evidence shows that the said patent was issued to him under an application made on the 11th day of October, 1872.

171 V. The evidence is insufficient to show that the application of Hall McAllister was based upon two locations of the Summit Quartz Mine, one made on the 26th day of March, 1863, for the Northerly 780 feet of said lode, vein or ledge, and the other made June 22nd, 1865, for the remainder of said vein, lode or ledge, in this: That there is no evidence showing, or tending to show, any locations of said Summit Quartz Mine, or any part thereof.

VI. The evidence is insufficient to justify the finding that the title of the defendants to the premises known as the "Toman Ranch" is derived from two patents issued by the Government of the United States to the predecessors in interest of the defendants. One patent was issued December 1st, 1876, and the other August 20th, 1878,

and both were made under the laws of the United States providing for the sale and disposition of what is known as "agricultural lands," in this: That there is no evidence showing or tending to show under what patents the defendants are the owners of the Toman Ranch, or under what title, or when patents were issued to the lands known as the Toman Ranch.

VII. The evidence is insufficient to sustain the finding that "both said patents contained a limitation upon the estate granted by the United States, giving the right to the proprietor of a vein or
172 ledge to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted" in this: That there is no evidence showing, or tending to show, said facts.

VIII. The evidence is insufficient to sustain that portion of the finding "That the diagram attached shows that the course of apex of said Summit vein through said Summit Quartz Mining claim referred to in the finding," in this: That there is no evidence showing the course of the apex as shown upon said diagram.

IX. The evidence is insufficient to sustain the finding "Within the said 'Summit Quartz Mine' is a certain vein, lode and ledge of quartz and rock in place carrying gold and other valuable minerals, which said vein, lode and ledge has its top or apex wholly within the surface lines of said Summit Quartz Mine extended downward vertically," in this: That there is no evidence tending to show that the vein, lode or ledge has its top or apex wholly within the surface lines of the Summit Quartz Mine extended downward vertically.

X. The evidence is insufficient to sustain the finding "In its course it crosses both the Northern and Southerly end of lines of said mining ground above described. On the North it crosses the end line at a point marked on the diagram 'Exhibit A' as
173 '42 and 48,' and being the beginning point of the description hereinabove set out. It crosses the Southern end line at a point marked on the diagram 'Exhibit A' as '48' and being 2 chains and 41 links from Southeast corner of said patented mining ground," in this: That there is no evidence to show that any vein crosses the Northerly or Southerly end of the mining ground described in the findings, at any point, or at the point designated in said findings.

XI. The evidence is insufficient to sustain the Finding "Ever since the said 22nd day of June, 1865, the plaintiff and its predecessors in title, and grantors, have been, and plaintiff was at the beginning of this suit, and now is, in the exclusive, open, notorious and adverse possession of all said Summit Quartz Mine, including the vein, lode or ledge above described, throughout its entire depth to the extent of 1165.56 linear feet longitudinally along its course, with the right to follow the said vein, lode or ledge in its descent or downward course to any depth in the direction of the dip or downward course of said vein, lode or ledge, and since the issuance of said patent on the 25th day of November, 1873, this plaintiff and its

grantors have been the owners in fee of said Summit Quartz Mine, including said vein, lode or ledge," in this: that there is no evidence showing that the plaintiff on the 22nd day of June, 1865, or
174 its predecessors in title, or grantors, or at any time prior to 1871 were in the possession of any or all of the Summit Quartz Mine. Or that they were in the possession of it with the right to follow the vein, lode or ledge in its descent or downward course in the direction of the dip beyond the said lines in said Summit Quartz Mine extended downward vertically.

XII. The evidence is insufficient to justify the Finding "That the defendants in this action have no right, title or interest in, or claim to, any part or portion of said vein, lode or ledge hereinbefore described, or of any vein or lode or ledge which has its top or apex within said Summit Quartz Mine, and which in its downward course enters, extends into, penetrates, or underlies the premises known as the "Toman Ranch" and described in the complaint herein," in this: That there is no evidence to sustain said finding, on the contrary, the evidence shows that the defendants have the right to all veins, lodes or ledges within the exterior boundaries of the Toman Ranch and east of the east side line of the Summit Quartz Mine.

XIII. The evidence is insufficient to sustain the Finding "Prior to the acquisition of title from the United States by the defendants and their grantors to the land and premises known as the "Toman
175 Ranch" the title to the said veins, lodes and ledges having apices in the said Summit Quartz Mine and extending into and underlying the surface of said premises known as the "Toman Ranch," had been and was severed from the title to said surface and had been granted and conveyed by the United States as aforesaid to the grantors of plaintiff under and in pursuance of the laws of the United States regulating the sale and disposal of mineral lands of the public domain" in this: that there is no evidence to sustain said finding.

XIV. The evidence is insufficient to sustain the Finding "The ownership, possession, or right of possession, of defendants and their grantors in and to the premises known as the 'Toman Ranch' and to each and every portion thereof, are and at all times were subject to the rights and interests of this plaintiff in and to said veins, lodes or ledges hereinbefore described" in this: that there is no evidence showing that the rights of the defendants in the premises known as the Toman Ranch are subject to the rights and interest of the plaintiff in any vein, lode or ledge; but, the evidence, on the contrary shows that the defendants are entitled to all veins, lodes or ledges within the exterior boundary lines of the Toman Ranch.

XV. The evidence is insufficient to justify the Finding that
176 the plaintiffs have sunk an inclined shaft upon any ledge having its top or apex within the Summit Quartz Mine, in this: That there is no evidence that any ledge has its top or apex within the Summit Quartz Mine.

XVI. The evidence is insufficient to sustain the Finding "All the

ore, mineral deposit, lodes, veins or ledges heretofore or now cut, exposed, open, worked or appropiated by means of said underground works of plaintiff, or by plaintiff in the course of such working and mining underneath the premises described as the 'Toman Ranch' are parts of such ledge having its top or apex wholly within the boundaries of said Summit Quartz Mine and within the end lines of said mine projected in their own direction, and were and are the properties of the plaintiff, and neither the defendants, nor anyone else from whom they claim title, ever owned or held any interest therein whatsoever," in this: that there is no evidence that any ledge, vein or deposit underneath the premises described as the Toman Ranch are part of any ledge having its top or apex within the boundary line of the Summit Quartz Mine. Nor is there any evidence showing that any vein or ledge underneath the land described as the Toman Ranch
177 are the properties of the plaintiff, but, on the contrary, the evidence shows that the same are the properties of the defendants.

XVII. The evidence is insufficient to sustain the finding "Said lode, ledge or vein, having its top or apex as aforesaid within the boundaries of the Summit Quartz Mine, contains mineralized ore of great value and the sole business of said plaintiff is the working of said vein and extracting therefrom the gold and other valuable minerals therein contained," in this, there is no evidence showing, or tending to show that there is any vein having its apex within the exterior boundaries of the Summit Quartz Mine.

XVIII. The evidence is insufficient to sustain the finding "The deed dated December 31st, 1898, and set out in *haec verba* in the respective answers of the defendants herein, does not include any portion of the said mine described in the letters patent from the United States to Hall McAllister hereinabove referred to, nor does it include any vein, lode or ledge having its apex within the exterior boundaries of the said mine as described in said patent and hereinbefore described," in this: that the evidence shows that the premises described in the deed, dated December 31st, 1898, does include all veins, lodes or ledges and all mineral within the exterior boundary line of the Toman Ranch extended downward vertically, whether the same has its apex within or without the exterior boundaries of the Sum-
178 mit Quartz Mine, or wherever the same may have its exterior boundaries; and in this: that the said deed includes all the vein, lode or ledge described in plaintiff's complaint which is within the exterior boundary lines of the land known as the Toman Ranch extended vertically downward and being east of the east side line of the Summit Quartz Mine.

The evidence is insufficient to sustain the finding that "All the denials contained in said answer of the defendants and each of them are untrue in this:

*a*. The evidence shows that the plaintiffs were never the owners or entitled to the possession of any vein, lode or ledge east of the east

side line of the mining ground known as the Summit Quartz Mine and described in the findings.

*b.* The evidence shows that the plaintiff never had the right to pursue any vein, lode or ledge beyond the exterior boundaries of the mining ground known as the Summit Quartz Mine described in the findings.

*c.* The pleadings show that the plaintiff on the 31st day of December, 1898, conveyed all interest it had, if any, in any property east of the east side line of the Summit Quartz Mine described
179 in the findings.

*d.* That the evidence shows that the plaintiff never did have the right to pursue any vein or lode under the land and premises known as the Toman land.

*e.* The evidence shows that if the plaintiff ever did have any right to pursue any vein under the lands known as the Toman Ranch that interest was conveyed by the deed made by the plaintiff to the Tomans set forth in the answer of the defendants herein.

*f.* The evidence shows that all veins, lodes or ledges within the ground known as the Toman land and which land is east of the Summit Quartz Mine belong to and are owned by the defendants Tomans, and that the plaintiff has no interest therein.

*g.* The evidence shows that the premises known as the Toman Ranch are not subject to any right or interest of the plaintiff.

*Errors of Law.*

The defendant specify the following errors of law committed at the trial and excepted to by the defendants:

The Court erred in sustaining the objection of the plaintiff's counsel to the introduction of the deed in evidence dated the
180 31st day of December, 1898, and made by the plaintiff to James and Eliza A. Toman.

And because said several matters and exceptions herein in this bill of exceptions stated do not appear of record herein; the defendants now appear in open Court and in the presence of the attorneys for the plaintiff, and within the time allowed by law after the entry of the judgment, and the further time granted by the parties, presents and tenders to this Court this bill of exceptions which defendants pray may be accepted and signed and sealed and made a part of the record herein. All of which is done according to law and the same is hereby settled and allowed this 13 day of June, 1902.

R. C. RUST, *Judge.*

[Endorsed:] Filed June 13th, 1902. C. L. Culbert, clerk. By J. R. Huberty, deputy clerk.

[Title of Court and Cause.]

*Notice of Appeal from Judgment.*

Take notice that the defendants, James Toman and Eliza A. Toman, in the above entitled action hereby appeal to the
181 Supreme Court of the State of California from the judgment therein given, made and entered in said Superior Court on the 6th day of November, 1901, in favor of the plaintiff in said action and against said defendants, and from the whole thereof.

Dated May 3rd, 1902.

CAMPBELL, METSON AND CAMPBELL,
*Attorneys for Appellants.*

To the Clerk of said Superior Court, to Messrs. Olney & Olney, W. J. McGee, Esq., and C. H. Lindley, Esq., Attorneys for Respondents.

Service of the foregoing notice of appeal admitted this 3rd day of May, 1902.

OLNEY & OLNEY,
*Attorneys for Plaintiff.*
W. J. McGEE,
C. H. LINDLEY,
*Of Counsel.*

Filed May 5th, 1902.

C. L. CULBERT, *Clerk.*

[Title of Court and Cause.]

*Order Submitting and Denying Motion for New Trial.*

Stipulation of counsel for an order of submission of motion for new trial was filed in open Court. Pursuant to stipulation
182 of counsel for all the parties litigant in the above entitled action, filed in open Court this day, the Court made the following minute order:

The motion of the defendants for a new trial in the above entitled action, coming on to be heard, the said defendants moved for a new trial of said cause and thereupon offered and read on said motion the judgment roll, the bill of exceptions and their notice of intention to move for a new trial, thereupon the said cause was submitted to the Court for its decision thereon. The Court thereupon made the following order: Defendants' motion for a new trial of the above entitled action having been heretofore submitted to the Court for its decision, and the Court being fully advised in the premises it is ordered that the said motion be and the same is hereby denied.

Done in open Court.

June 14th, 1902.

R. C. RUST, *Judge.*

[Endorsed:] Filed June 14th, 1902. C. L. Culbert, clerk. By J. R. Huberty, deputy clerk.

Recorded on the 14th day of June, 1902, in Book 10, page 424, of Minutes and Orders, Civil and Criminal, Amador County.

183 [Title of Court and Cause.]

*Notice of Appeal from Order Denying New Trial.*

Take notice that the defendants James Toman and Eliza A. Toman in the above entitled action hereby appeal to the Supreme Court of the State of California from the order of said Superior Court denying defendants' motion for a new trial given, made and entered in said Superior Court on the 14th day of June, 1902, and in favor of the plaintiffs in said action and against said defendants, and from the whole of said order.

Dated June 28th, 1902.

CAMPBELL, METSON & CAMPBELL,
*Attorneys for Defendants James Toman and Eliza A. Toman.*
GALPIN & BOLTON,
*Of Counsel for said Defendants.*

To the Clerk of said Court, Messrs. Olney & Olney, Attorneys for Plaintiff, W. J. McGee, Esq., and C. H. Lindley, Esq., of Counsel for Plaintiff, and Messrs. Rodgers, Paterson & Slack, Attorneys for the Defendant East Central Eureka Mining Company.

Service of the foregoing notice of appeal from order denying
184 motion for a new trial and receipt of copy thereof admitted this 1st day of July, 1902.

OLNEY & OLNEY,
*Attorneys for Plaintiff.*
W. J. McGEE,
C. H. LINDLEY, *Of Counsel.*
RODGERS, PATERSON & SLACK,
*Attys. for Dft. East Central Eureka M. Co.*

[Endorsed:] Filed July 7th, 1902. C. L. Culbert, clerk.

*Stipulation to Transcript.*

It is hereby stipulated and agreed that the foregoing transcript is true and correct; that the said transcript on appeal contains true and correct copies of all the papers therein set forth now on file in the office of the County Clerk of the County of Amador, State of California, with the order therein made and entered on the minutes, and that the same may be used on both the appeals or on either.

It is further stipulated and agreed that an undertaking on
185 each of the said appeals in due form of law, has been properly filed in said cause.

Dated August, 1902.

OLNEY & OLNEY,
*Attorneys for Plaintiff and Respondent.*
W. J. McGEE AND
C. H. LINDLEY,
*Of Counsel for said Plaintiff and Respondent.*
RODGERS, PATERSON & SLACK,
*Attorneys for East Central Eureka Mining Company, Defendant and Respondent.*
CAMPBELL, METSON & CAMPBELL,
*Attorneys for James and Eliza A. Toman, Defendants and Appellants.*
GALPIN & BOLTON,
*Of Counsel for said Appellants.*

*Clerk's Certificate to Transcript.*

I, C. L. Culbert, County Clerk of the County of Amador, State of California, and *ex-officio* Clerk of the Superior Court in and for said county, hereby certify that I have compared the foregoing transcript with the original papers in the above entitled action, now on file in my office, and with the orders therein made and entered on the minutes of said Court, and that the said papers and orders
186–190 therein contained are full, true and correct copies of the originals on file in this office, and of the whole thereof. That the erasures and interlineations were made before certifying hereto.

I further certify that a sufficient undertaking on each of said appeals in due form of law, was properly filed in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this — day of ——, 1902.

[SEAL.]

C. L. CULBERT, *Clerk*,
By —— ——, *Deputy Clerk*.

191 **Copy.**

In the Supreme Court of the State of California.

Sac. No. 1095.

Dept. One.

CENTRAL EUREKA MINING CO., Respo.,
*vs.*
EAST CENTRAL EUREKA MINING CO., App.

On Appeal From the Superior Court in and for the County of Amador.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the Court herein is delivered by Angellotti J.

We concur, Shaw J, Van Dyke J.

Whereupon, it is ordered, adjudged and decreed by the Court that the judgment and order of the Superior Court in and for the County of Amador in the above entitled cause, be and the same are hereby affirmed.

I, Frank C. Jordan, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 1st day of February, 1905, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 15th day of September, A. D. 1905.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By I. ERB, *Deputy*.

192 [Endorsed:] Sac. No. 1095. In the Supreme Court, State of California. Remittitur. Central Eureka Mining Co., Respo., *vs.* East Central Eureka Mining Co., App. Clerk's costs $—. Paid by Appellant, $—. Paid by Respondent, $—. Total $—. Frank C. Jordan, clerk. By —— ——, Deputy.

193 & 194 *Opinion.*

Department One.

Sac. No. 1095.

CENTRAL EUREKA MINING COMPANY (a Corporation), Plaintiff and Respondent,

*v.*

THE EAST CENTRAL EUREKA MINING COMPANY (a Corporation), Defendant, JAMES TOMAN and ELIZA A. TOMAN, Defendants and Appellants.

Defendants Toman appeal from a judgment quieting plaintiff's title to certain mining property, and from an order denying their motion for a new trial. The plaintiff is the owner of the Summit quartz mine, situated in Amador County, and the controversy here is as to so much of the vein of ore having its apex within the surface lines of plaintiff's location as lies within vertical planes drawn through the end lines of such location and those lines produced in their own direction, and underneath the surface of defendants' land. This vein, at the apex, traverses plaintiff's location, crossing both the southern and northern end lines. In its downward course the vein descends into the earth at an angle approximately of 65 deg. eastwardly, and on such downward course passes outside of a plane drawn down vertically through the east side line of plaintiff's surface location, and enters the adjoining land of defendants at a depth of 1,094 feet from the collar of plaintiff's shaft, and ex-
195 & 196 tends for a considerable distance therein. Plaintiff has already sunk its shaft to a depth of about 2,000 feet, and was at the time of the commencement of this action engaged in removing the ore and mineral-bearing rock from said vein at such depth of about 2,000 feet. The end lines of plaintiff's claim are not parallel, but converge in the direction of the dip of the vein.

Plaintiff's title to the Summit quartz mine is derived from Hall McAllister, the patentee from the United States. The patent was issued November 25, 1873, and the final entry and payment were made on October 11, 1872, several months after the passage of the Act of Congress of May 10, 1872, relative to the promotion of the development of the mining resources of the United States. The application for the patent, based upon two locations made in the years 1863 and 1865, respectively, was filed on February 7, 1871, while the act of July 26, 1866, commonly known as the "Lode and Water Law," was in force, and was pending on May 10, 1872, awaiting the approval by the surveyor-general of the survey which had already been made and submitted for approval. The patent subsequently issued upon said application purported to grant to the patentee the mining premises described therein, with the exclusive right of possession and en-

joyment of 1,165.56/100 linear feet of said vein (the length thereof on the apex between plaintiff's end lines) throughout its entire depth, although it might enter the land adjoining, providing that the right of possession thereby granted to any portion of the vein outside of the vertical side lines of the survey should be confined to such portions thereof as lay between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of such vein. The patent recites that the proceedings were had in pursuance of the Act of July 26, 1866, the Act amendatory thereof approved July 9, 1870, and the Act of May 10, 1872, and that the patent is issued in conformity with said acts. The defendants own the adjoining land known as the "Toman Ranch;" their title being derived through mesne conveyances from patents issued under the laws of the United States providing for the sale and disposition of agricultural lands, which patents were junior in point of time to the patent for the Summit quartz mine, and contained a reservation giving the right to the proprietor "of a vein or ledge to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted."

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It will be seen from the foregoing that the mining patent purported, upon its face, to grant to plaintiff's predecessor all that portion of the vein of ore which is here in controversy. Defendants contend, however, that notwithstanding the attempted conveyance, in terms, of the property in dispute, the patent failed to convey any extra lateral rights, by reason of the fact that the end lines of plaintiff's claim, as located, surveyed and granted, were not parallel, as required by the Act of May 10, 1872.

It appears to be recognized by the authorities that compliance with the requirement of the Act of May 10, 1872, that the end lines shall be parallel, is essential to the existance of any right in the locator or patentee to follow his vein outside of the vertical planes down through the side lines, in all cases where the location was made under such act. Iron S. M. Co. *v.* Elgin, M. & S. Co., 118 U. S. 196; Del Monte M. & M. Co. *v.* Last Chance M. & M. Co., 171 U. S. 55; Argonaut M. Co. *v.* Kennedy M. & M. Co., 131 Cal. 15, 25.

Plaintiff urges that as the only object of such requirement was to prevent the locator, in following his vein downward, from acquiring a greater length underneath the surface than he had apex at the surface, a grant of extralateral rights within converging end line planes, as in this case, would be within the spirit and intent of the Act of 1872, and therefore valid. This view is opposed to statements made in the opinions in the cases last cited, which appear to incline to the conclusion that extralateral rights are granted under the Act of 1872 only when the end lines are parallel. However, it is unnecessary to definitely decide this point in this case, for we are satisfied that as the locations upon which the patent was based were made prior to May 10, 1872, the requirements

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as to parallelism of end lines was not applicable thereto. It was not until the passage of the Act of 1872 that there was any such requirement, and it is not disputed that, had the patent issued prior to the passage of such act, it would have conveyed the extralateral right between the converging end planes. While the Act of May 10, 1872, repealed the previous statutes regarding the location and patenting of mining claims of the character here involved, the framers thereof were very careful to manifest their intention that existing rights should not be affected by such repeal. By section 2322, Rev. St.—one of the sections of said act—it was declared that "the locators of all mining locations heretofore made * * * so long as they comply with the laws of the United States, and with State, territorial and local regulations not in conflict therewith, shall have the exclusive right of possession and enjoyment of all the surface; included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations," provided that their right of possession to such outside parts of such veins shall be confined between vertical planes drawn downward through the end lines of their locations, continued in their own direction. It was further expressly provided in the act that "such repeal shall not affect existing rights. Applications for patents for mining claims now pending may be prosecuted to a final decision in the General Land Office, but in such cases, where 201 & 202 adverse rights are not affected thereby, patents may issue in pursuance of the provision of this act." And further: "Nor shall this act affect any right acquired under said act" (the Act of 1866). And still further: "Provided that nothing contained in this act shall be construed to impair in any way rights or interests in mining property acquired under existing laws." In the face of such provisions, it cannot be held that it was the intention of Congress to deprive a previous locator, by any new requirement, of any existing right, unless such intention is very clearly manifested. So far as the particular requirement as to parallelism of end lines is concerned, it would appear to be well settled that it has no application to locations made prior to the Act of May 10, 1872. The objection of want of parallelism in end lines, where the patent was issued subsequent to the passage of said act, based upon locations made prior thereto, has been several times disposed of by the simple statement that when the locations were made there was no law requiring such parallelism. See Carson City H. & S. M. Co. *v.* North Star M. Co. (C. C.) 73 Fed. 597, 599; 83 Fed. 658, 669. In Iron S. M. Co. v. Elgin M. & S. Co., 118 U. S. 196, 208, the Supreme Court of the United States said, in effect, that a locator under the Act of 1866 has in such a case extralateral right, notwithstanding the lack of parallelism. The question was fully considered and definitely decided by this court in favor of such right in Argonaut Min. Co. *v.*

Kennedy M. & M. Co., *supra*. It was said therein that it would have been competent for Congress, in the law of 1872, to have required parties who had equitable rights to patents, to have made their end lines parallel before a patent issued, on pain of losing all extralateral rights, but there were no such provisions in the Act of 1872, and that the rights of locators under former laws were by said act expressly confirmed to them. The extralateral right was in that case confirmed, although the end lines diverged; it being held that it could be determined, as matter of law, from the patent, what
203 & 204 portion of the vein between those lines, not exceeding at any depth the stated number of linear feet at the apex, was conveyed. Where the end lines converge, as in this case, there can, of course, be no question as to the definiteness of the description of the extralateral right conveyed. By reason of such converging, the patentee is confined, within well-defined boundaries, to less on the dip below the surface than he had upon the surface.

It is sought to distinguish this case from the Argonaut Case, and other cases relied on by plaintiff, by showing them in all these cases the applicant for a patent had made his application, and paid his money thereon, prior to the passage of the Act of May 10, 1872, and thereby had acquired an equity susceptible of enforcement against the government, while in the case at bar, although the locations and application for a patent had been made prior to May 10, 1872, the payment was not made or the survey finally approved by the surveyor general until after that date. We find nothing in the report of the case of Carson City *v.* North Star, etc., Co., *supra,* showing that the money had been paid prior to May 10, 1872, and, so far as appears therein, the case was an exact parallel to this case. We are, however, of the opinion that the distinction alleged is not at all material. We are not concerned here with the question as to how far a locator must have proceeded with his claim, to put it beyond the power of the government to interfere with him in the enjoyment of the same. As we read the Act of 1872, it seems very clear that it was the intention of Congress to preserve to the prior locator everything that his location would have given him, had the Act of 1872 not been enacted, except possibly the width of the claim on the surface. See Lakin *v.* Roberts, 54 Fed. 461.

We have already referred to the various provisions upon this subject contained in the Act of 1872, and it is unnecessary to here restate them. The rights sought by the act to be pre-
205 & 206 served were such rights as had been acquired under the prior acts, by the making of a valid location, even though those rights were not of such a nature that the government might not, if it had seen fit so to do, deprive the locator thereof; and the right to obtain a patent in accordance therewith under the provisions of the Act of 1872 was given for the reason that the previous laws as to the issuance of such patents were repealed, and there was no other law under which a patent could be issued for any such mining claim. It was left to the Land Department to determine,

as to any such alleged prior location, what the rights of the locator were under the previous acts, and in accordance with the procedure laid down by the Act of 1872, to issue a patent conveying the title to the Government, so far as might be necessary to effectuate such rights.

The patentee did not waive or renounce any extralateral right by the acceptance of the patent. It is true that the patent did, in accordance with the express provisions of the Act of 1872, purport to grant, in addition to the vein or lode originally located, the right to all other veins or lodes, the top or apex of which lay inside of the surface lines of the location extended downward vertically, to their entire depth, although in the course downward they extended outside the vertical side lines. It might, perhaps, be contended with some force that as to the other veins and lodes, which were not embraced within the original location, and the right to which was for the first time given by the Act of 1872, the requirement, as to parallelism of end lines might preclude any extralateral right. But the patent, in terms, also purported to grant the 1165.56 linear feet of the original vein, throughout its entire depth, between the end lines continued in their own direction. By the acceptance of such a patent, there was no indication of any intent to waive or renounce any right to follow the vein, between the end lines, given by the original location, for those rights were expressly confirmed thereby, and plaintiff bases its claim entirely thereon. We cannot see that the legal effect of such an acceptance was a waiver or renouncing of any such right. These particular rights the patentee was entitled to, even though his end lines were not parallel, and the fact that the patent purported to also grant something else to which he may not have been entitled cannot affect his rights as to the original vein, which are also confirmed by the patent. It is true that the patent recites on its face that it is issued in pursuance of the Act of 1872, but it also recites that it is issued in pursuance of the Act of July 26, 1866, and the act amendatory thereof, approved July 9, 1870, and, in conjunction with the public records in evidence, shows that it was issued upon locations made prior to May 10, 1872, and upon an application pending at that date.

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The decision in the case of New Dunderberg *v.* Old, 79 Fed. Rep. 598, relied upon by appellant, does not sustain their claim. The Dunderberg owners claimed the right to follow their vein on its course or strike outside of and beyond their patented boundaries, and into a prior claim (the Frostberg). They claimed that they had this right under the claim of 1866, but they had so located their claim on the surface that the lode crossed both side lines of the claim diagonally on its strike, and passed out of the claim more than 300 feet before it entered the Frostberg claim, and had accepted a patent for this location. This patent did not purport to grant the extralateral right alleged, and could not, under the law, grant it upon the surface location, which had to be made under either act, for under both acts the locator was confined, in following the strike of his vein,

within the surface boundaries he had himself defined. To include the extralateral right sought in that case, it was necessary for the Dunderberg owners to go beyond their location, entry, and patent, and claim something not embraced therein at all. It was in regard to such a case that the Circuit Court of Appeals said that the claimant was bound by his own location, entry and application, and a patent in accordance therewith, and that his location and entry
209 & 210 for a patent was a notice of abandonment of everything not included therein. It was said: "A claimant who discovered and located a lode mining claim under the Act of 1866 renounces and abandons all rights and privileges to follow his lode on its course beyond the exterior lines of his patented claim, when he located it upon the surface of the ground, enters it, and accepts a patent for it under the Act of May 10, 1872." Since the side lines of the Dunderberg claim crossed the course of the strike of the vein, they were held to constitute end lines, and it was held that, under the express terms of the patent, the owner of the claim was without right to the possession of the lode outside of those lines after he obtained his patent. This case is in no way applicable here.

A question is raised as to the effect upon plaintiff's extralateral right to a quitclaim deed made by plaintiff to the defendants Toman on December 31, 1898. By this deed, plaintiff purported to remise, release, and forever quitclaim unto the Tomans "All those certain lots, pieces, or parcels of land situate, lying and being in the said County of Amador, State of California, and bounded and particularly described as follows, to-wit: First, That portion of Sections Eight (8) and Seventeen (17) Township Six (6) North Range Eleven (11) East, Mount Diablo Base and Meridian, lying north of the center of that certain wagon road extending between the towns of Ione and Volcano and known as the Ione and Volcano wagon road, and lying east of that certain patented mining ground known as the Summit Quartz Mine, and also east of that certain patented mining ground known as the Amador Consolidated Mine." The second parcel described lay to the west of the Summit Quartz Mine, and is in no way here involved. By this deed the plaintiff further purported to remise and release the Tomans from all
211 & 212 claim, bonds, and contracts made by the Tomans to it or its predecessors, and specially from any covenant contained in any agreement between the parties dated October 23, 1897, and duly recorded. The deed recited that it was made pursuant to a resolution of the board of directors adopted December 31, 1898. The making of the deed was subsequently ratified by two-thirds of the stockholders. The objection made by plaintiff when defendants offered this deed in evidence was sustained, and the deed excluded, upon the ground, as stated by the court, that it did not purport to convey any portion of the mining ground of plaintiff. Admittedly, the description in the deed does include the land of the Tomans adjoining plaintiff's claim, through which the vein in controversy has its dip. Defendants, relying upon the well-recognized

principle that a conveyance of land, in the absence of express reservation, carries not only the surface of the earth, but everything under and over it, including the minerals therein contained, claim that the effect of this deed was to convey to defendants the portion of the vein here in dispute. As the plaintiff was at the date of the deed the owner of such portion of said vein, such must be held to be the effect of the quitclaim deed if the description in the deed includes the same. As has already been seen, the deed purported to convey only such portions of the sections of land as lay east of "that certain patented mining ground known as the Summit Quartz Mine and also east of that certain patented mining ground known as the Amador Consolidated Mine." It is only by construing this language as referring exclusively to the lines of the surface location that defendants' contention that this description included the vein can be upheld. As a matter of fact, the vein under the Toman surface was, so far as it lay between the converging end line planes of plaintiff's claim, as much a part of the Summit Quartz Mine, and of the patented mining ground known as such
213 & 214 mine, as was the land within the surface lines of plaintiff's location. Tyler Min. Co. *v.* Last Chance M. Co., 90 Fed. 15, 21; Empire State, etc., Co. *v.* Bunker Hill, etc., Co. 121 Fed. 973-977; Davis *v.* Shepherd, 31 Colo. 141. It had been by the United States government severed from the Toman land, and granted to plaintiff's predecessor, as an integral part of the Summit Quartz Mine, and the agricultural patents of defendants' predecessors contained a corresponding limitation upon the estate granted to them. Unquestionably it would have been conveyed by any instrument purporting to grant the Summit quartz mining claim or the Summit quartz mining ground, for it was part and parcel thereof. The reasons which would require us to hold that the vein was conveyed by a deed purporting to convey the Summit quartz mining claim or mining ground are equally applicable to a deed purporting to convey only lands lying east of such claim or ground, and forbid the conclusion that it was intended to convey any part of the mining claim or ground itself. A very different case would be presented if we were dealing with a deed which contained a description of a parcel of land simply by metes and bounds, or a deed which purported to convey all lands lying east of a certain defined surface line. We have no such deed here, but one which, in terms, limits its operation to such portions of the designated sections as lie east of the "mining ground" of plaintiff. Taking into consideration simply the character of plaintiff's property, we are of the opinion that the deed did not purport to convey any portion of any vein that had its apex within the surface lines of plaintiff's location, so far as it lay between the converging end lines of plaintiff's claim.

When we examine the deed in the light of the circumstances surrounding its execution, as disclosed by the evidence
215 & 216 introduced by defendants, it is apparent that there was no intention to convey any part of the mining claim.

The resolution of the board of directors of plaintiff authorizing the execution of the deed, which is referred to in the deed, and the instrument of ratification signed by stockholders of plaintiff, show that the object of the quitclaim deed was to free the land and title of the defendants from the effect of a contract made on October 23, 1897, by the Tomans and plaintiff, whereby the Tomans had agreed to sell and convey to plaintiff their lands adjoining plaintiff's claim. It appears from the resolution of the board of directors that the Tomans, owning the agricultural lands lying east of plaintiff's claim, had agreed to sell and convey to plaintiff, the owners of the Summit quartz mine, certain real property, the description being apparently the same as that in the quitclaim deed, and that it had been mutually agreed that the agreement should be canceled—the plaintiff to pay the Tomans $1,000 in consideration of such cancelation—and the president and secretary were authorized to execute on behalf of the corporation "a quitclaim deed of all the right, title and interest of the corporation in and to the real property described in said contract of sale, and particularly described as follows." Then follows the description contained in the deed. The ratification by the stockholders recites the execution to the Tomans of "a quitclaim deed, conveying all their right, title and interest of said corporation in and to the property described in said contract," and ratifies such a deed. It is very clear that it was not the intention of either directors or stockholders to remise or release or quitclaim any interest of plaintiff in or to anything that was not covered by the agreement of sale executed by the Tomans. The manifest object was to place the Tomans, so far as title was concerned, exactly where they were at the date of the execution of the agreement of sale.

217 & 218 Only "the property described in said contract" was to be quitclaimed. The only property described in said contract of sale was property adjoining plaintiff's mining claim. No part of such mining claim was included therein.

We are therefore of the opinion that there was no error in refusing to receive the deed in evidence, for the reason that, quitclaiming only lands lying east of the "mining grounds known as the Summit Quartz Mine," it did not purport on its face to affect any portion of plaintiff's mining claim, and there is nothing in the surrounding circumstances shown by the evidence introduced by defendants, conceding that the language of the deed is such as to justify consideration of those circumstances, that would justify such a construction of the deed as would make it a conveyance of any portion of plaintiff's interest in its mining claim.

The judgment and order are affirmed.

ANGELLOTTI, *J.*

We concur:

SHAW, *J.*

VAN DYKE, *J.*

219 & 220 In the Supreme Court of the State of California. In Bank.

Sac. No. 1095.

CENTR'L EUREKA MG. CO.
*v.*
E. C. E. MG. CO.

By the COURT:

Rehearing denied, March 2, 1905.
Filed Mar. 2– 1905.
FRANK C. JORDAN, *Clerk*,
By I. ERB, *Deputy*.

I, Frank C. Jordan, clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of rehearing denied filed March 2nd, 1905, in the above entitled cause, as shown by the records of my office.
Witness my hand and the seal of the court, this 7th day of October, A. D. 1905.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By I. ERB, *Deputy*.

221 & 222 *Assignment of Errors.*

In the Supreme Court of the State of California.

No. —.

CENTRAL EUREKA MINING COMPANY (a Corporation), Respondent,
*vs.*
THE EAST CENTRAL EUREKA MINING COMPANY (a Corporation), James Toman and Eliza A. Toman, Appellants.

The Central Eureka Mining Company, a corporation, James Toman having petitioned the above-named Court for an order permitting them to prosecute a writ of error to the honorable the Supreme Court of the United States from the final judgment made and entered in said cause by the supreme court of the State of California, now make and file with their said petition the following, and specify the same as their assignment of errors herein, upon which they will ask for a reversal of said judgment upon said writ.

223 & 224 I.

At the trial hereof the defendants offered in evidence the deed set forth in the answer herein, to the admission of which the plaintiff

objected. The court sustained the objection and excluded said deed; by which ruling and decision of said court the said trial court erred.

II.

At said trial said defendants specifically objected to the finding that said patent (meaning the patent under which the plaintiff claimed titled to the premises) was issued in pursuance of and in conformity with the Revised Statutes of the United States, Title 32, Chapter 6; and said defendants claimed that said statutes, and especially Section 2320 of the Revised Statutes, did not authorize the issuance of said patent to said Hall McAllister, for that the end lines of the said patent were required thereby to be parallel, whereas they were not parallel. But the court construed Section 2320
225 & 226 of the Revised Statutes (which is a portion of said Chapter 6) so that the said requirement thereof did not apply to this patent, and decided that plaintiff had a right to go outside of the vertical walls of his surface location. And thereby the court deprived said plaintiffs *of* a right, privilege and immunity arising under said Title 32, Chapter 6, and under Section 2320 of the Revised Statutes of the United States, and under the Constitution of the United States, and under the Statutes of the United States relating to agricultural lands and patents therefor. And said courts of the State of California thereby decided that plaintiffs in error had no right or immunity under said statutes relating to agricultural lands and the patents of the United States therefor, nor under said Title 32, Chapter 6, of said statutes, to the possession of the premises; for that said Section 2320 did not apply to said patent, but that the Act of July 26, 1866, entitled, "An Act granting the right-of-way to Ditch and Canal Owners over the public land, and for other purposes," and the act amendatory thereof, approved July
227 & 228 9, 1870, alone applied thereto. That the court erred in so deciding.

III.

That said findings further found and decided that the Patents of the United States, which constitute the origin of title of defendants, were issued, one in December, 1876, and the other in August, 1876, under the laws of the United States providing for the sale and disposition of what is known as agricultural lands * * * but prior to the acquisition of title from the United States by the defendants and their grantors to the land and premises known as the "Toman Ranch," the title to said veins, lodes and ledges * * * extending into and underlying the surface of said premises known as the "Toman Ranch" had been granted and conveyed by the United States, as aforesaid, to grantors of the plaintiff, under and in pursuance of the laws of the United States relating to the sale and disposal of mineral lands; whereas defendants claimed a right and immunity, under and in pursuance of said Statutes providing for the sale and dis-

posal of what is known as agricultural lands of the
229 & 230 United States, to have and enjoy all of the premises in his said Patent described even to the center of the earth. That the Court erred in deciding that the title of the plaintiff by virtue of his said mineral patent was superior to the title of defendants under their said agricultural patents.

IV.

That said findings further decided that the Deed set out in the Answer, delivered by defendants to the plaintiff, did not convey any portion of the said vein or lode in said mineral patent described to the defendants, and did not operate to convey any portion of said vein, lode or ledge. That the Court erred in so deciding.

V.

The Court erred in sustaining the objection made by counsel for plaintiff to the Deed set out in the Answer when offered in evidence by the defendants.

231 & 232 Wherefore, by reason of the foregoing Assignment of Errors and the petition of defendants, the plaintiffs in error herein ask leave to present a writ of error herein to the Supreme Court of the United States, and the plaintiffs in error submit the said Petition and this Assignment of Errors, and pray for an order of this Honorable Court allowing said writ of error.

And said plaintiffs in error further pray that on the hearing of this cause by said Supreme Court of the United States upon such writ of error, all of the judgment rendered herein by the Superior Court of the County of Amador, State of California, and the judgment of the Supreme Court of the State of California affirming the same, may be by said Supreme Court of the United States reversed and set aside.

That on said hearing of such writ of error such other and further order may be made in the premises as may be just.

Dated....., 1905.

CAMPBELL, MELSON & CAMPBELL,
*Attorneys for Plaintiffs in Error.*

233 & 234 *Petition for Allowance of Writ of Error.*

In the Supreme Court of the State of California.

No. .....

CENTRAL EUREKA MINING COMPANY (a Corporation), Respondent,
*vs.*
THE EAST CENTRAL EUREKA MINING COMPANY (a Corporation), James Toman and Eliza A. Toman, Appellants.

To the Honorable W. H. Beatty, Chief Justice of the State of California:

Your petitioners respectfully show to this Honorable Court:

That on the eighth day of April, 1901, the plaintiff herein filed its Complaint in the County of Amador, in the State of California, seeking to quiet the title of plaintiff against the defendants. That the Demurrer thereto was filed on the first day of June, 1901. That thereafter, the said Demurrer having been overruled, the
235 & 236 defendants filed their Answer to said Complaint. That at the time of the trial, by leave of Court first had and obtained, defendants filed, October 17, 1901, the Amended Answer of the defendants Toman.

That on the fourteenth day of October, 1901, the cause came on for trial before the Court, sitting without a Jury. Thereupon the Court proceeded to take evidence, oral and documentary; and having duly considered the evidence and the law and the facts, rendered its decision in favor of the plaintiff and against the defendants. Said decision and findings were filed November 6, 1901, and on the same day judgment was entered in favor of the plaintiff and against the defendants. A Bill of Exceptions was duly proposed, amended and settled and allowed and filed on the fifteenth day of June, 1902.

Thereupon, and on or about the fifth day of May, 1902, the Notice of Appeal from said judgment was duly made and filed.
237 & 238 A motion having been made for a new trial, the said motion was denied in open Court June 14, 1904. Another Notice of Appeal from the order denying said new trial was duly served and filed on the 28th day of June, 1904, and an undertaking on each of said appeals, in due form of law, was duly filed in said cause. That said undertaking remains in full force.

That said appeal came on for trial in the Supreme Court of the State of California on the 16th day of November, 1904. And that on the 1st day of February, 1905, said Supreme Court rendered its decision and judgment on said appeal; by the terms of which decision and judgment the judgment of said Superior Court of Amador County was affirmed.

That in said action and proceeding there was involved and drawn in dispute, and decided in said Superior Court, as well as on said

appeal, the right, privilege and immunity claimed by these defendants under the Statutes and Laws of the United States;
239 & 240 that is, under the provisions of Chapter 6 of Title 32 of the Revised Statutes of the United States, and legislation amendatory thereof and subsequent thereto, and under the Act of Congress of July 26, 1866, entitled "An Act granting the right-of-way to Ditch and Canal Owners over the public land, and for other purposes," and also the rights, privileges and immunities claimed by defendants under the Statutes of the United States relating to disposal and sale of the agricultural lands of the United States, and the rights and immunities conferred thereunder upon these defendants by virtue of the agricultural patents to them issued; which said right, title, privileges and immunities so claimed by said defendants under said Acts of Congress relating to said mineral lands, and also to said agricultural lands, were by these defendants at the trial in said Superior Court, and on their appeal before said Supreme Court, especially set up and claimed under the aforesaid Statutes and regulations of the United States, to the effect that these de-
241 & 242 fendants by reason thereof, at all the times mentioned in said Complaint and Answer, had, and now have, the exclusive title and right to the premises described in the Complaint herein, under and by virtue of the provisions of the Constitution of the United States and of said Statutes, and of the patents issued to these defendants in error, one issued December 1, 1876, and the other August 20, 1878, and both made under the Statutes of the United States providing for the sale and disposition of what is known as agricultural lands.

That defendants had good right, title and interest to the premises under and by virtue of said Acts of Congress and of said agricultural patents.

That the defendants set out and claimed at the trial of said cause, and on their appeal against the claim of the plaintiff, that the end lines of said Summit Quartz Mine were not and are not parallel to each other, that said end lines diverged and separated
243 & 244 from each other; that because of the provisions of the Act of Congress approved May 10, 1872, hereinbefore referred to, and Section 2320 of the Revised Statutes of the United States, and because of the Constitution of the United States, the plaintiff is not, and never was, the owner of the premises in the Complaint described by virtue of any patent of the United States to the plaintiff or his assignors issued; that the decision and judgment of the Superior Court of the State of California, as well as the decision of the Supreme Court of said State on said appeal, were each and both decisions against the right, title, privilege and immunity so existing, set up and claimed by the defendants under the Constitution and laws of the United States hereinbefore specified.

The said East Central Eureka Mining Company, a corporation, James Toman and Eliza Toman, being dissatisfied with the judgment made and entered in said action, and with the affirmance of

said judgment by said Honorable Court, and feeling
245 & 246 themselves aggrieved thereby, and by the action of said Court in awarding a judgment in favor of the Central Eureka Mining Company as plaintiff, as aforesaid, and against the defendants herein, the defendants herein claiming under the facts and law that the judgment should have been in favor of the defendants, and that the judgment herein is contrary to the law and the facts, and the judgment should have been that the plaintiff take nothing by its said action, and that the defendants herein should have recovered judgment for their costs herein incurred; for the proof of which statement, and for further particulars as to the questions and matters involved in said cause, reference is hereby made to the record of said cause now on file in the office of the Clerk of the Supreme Court of the State of California, and to said certified copy of said undertaking on appeal; and all of said record, and said copy of said undertaking on appeal, are hereby made a part hereof.

247 & 248 Come now the aforesaid East Central Eureka Mining Company, a corporation, James Toman and Eliza A. Toman, by their attorneys, and petition this Honorable Court to allow said defendants, the plaintiffs in error, to prosecute the writ of error herein to the Honorable the Supreme Court of the United States under and in accordance with the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the plaintiffs in error herein shall give upon said writ as required by the laws of the United States and by the rules of the Supreme Court of the United States; and that after giving such security all further proceedings in the Superior Court of the County of Amador, in the State of California, and the Supreme Court of the State of California, be suspended and staid until the determination of such cause of said writ of error.

Dated....., 1905.

CAMPBELL, METSON & CAMPBELL,
*Attorneys for Defendants and Plaintiffs in Error.*

249 & 250 Writ of Error allowed this Third day of October, 1905.

W. H. BEATTY,
*Chief Justice of the Supreme Court of California.*

251 & 252 *Order Allowing Writ of Error and Fixing Amount of Bond.*

In the Supreme Court of the State of California.

CENTRAL EUREKA MINING COMPANY (a Corporation), Respondent,
vs.
THE EAST CENTRAL EUREKA MINING COMPANY (a Corporation), James Toman and Eliza Toman, Appellants.

On the petition of The East Central Eureka Mining Company, James Toman and Eliza A. Toman, praying for a writ of error, and the accompanying assignments of error presented and filed therewith, on this third day of October, 1905, and on motion of counsel for said defendants,

It is ordered that a Writ of Error herein issue, and the same is hereby allowed; and the amount of the bond on said appeal is fixed at the sum of Three Hundred Dollars.

Dated October 3, 1905.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

253 & 254 ***Bond.***

In the Supreme Court of the State of California.

CENTRAL EUREKA MINING COMPANY (a Corporation), Respondent,
*vs.*
THE EAST CENTRAL EUREKA MINING COMPANY (a Corporation), James Toman, Eliza A. Toman, Appellants.

Know all men by these presents: That James Toman and Eliza A. Toman as principal-, and A. B. Harrison and M. W. Solomon as sureties, are held and firmly bound to the aforesaid respondent, its administrators, executors and assigns, in the sum of three hundred dollars, gold coin, to be paid to the aforesaid respondent, its administrators, executors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

255 & 256

Dated this third day of October 1905.

Whereas, the above-named plaintiffs in error herein sued out a writ of error to the Supreme Court of the United States to reverse the judgment of the superior court of the County of Amador, in the State of California, and to reverse the findings, judgments and decrees in the above-entitled action;

Now, therefore, the conditions of this obligation are such that if the above-named plaintiffs in error shall prosecute their writ of error to effect and answer all damages and costs if they fail to make the same good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

JAMES TOMAN. [SEAL.]
ELIZA A. TOMAN. [SEAL.]
A. B. HARRISON. [SEAL.]
M. W. SOLOMON. [SEAL.]

Signed, sealed and delivered in the presence of:

____ ____
____ ____

257 & 258 STATE OF CALIFORNIA,
*City and County of San Francisco, ss:*

A. B. Harrison and M. W. Solomon, the persons named in and who subscribed the foregoing bond as sureties thereto, being severally duly sworn each for himself, says: That he is worth the amount specified in said undertaking as the penalty thereof, over and above all his just debts and liabilities exclusive of property exempt from execution, and that he is a resident and free-holder within the State of California.

A. B. HARRISON.
M. W. SOLOMON.

Subscribed and sworn to before me, this 3rd day of October, 1905.
EDNA T. KEATING, [SEAL.]
*Notary Public in and for the City and County of San Francisco, State of California.*

The above bond approved as to form and sufficiency.

____ ____.

259 *Certificate of Clerk.*

I, Frank C. Jordan, clerk of the supreme court of the State of California, hereby certify that the preceding and annexed pages, numbered from one to 259 inclusive, contain and are true and correct copies of the writ of error, citation and bond, transcript on appeal to supreme court of California, judgment of superior court of Amador County, State of California, judgment of the supreme court of the State of California, opinion of the supreme court of the State of California, assignment of errors, petition for writ of error, and order allowing writ of error and fixing amount of bond, as

shown by the records of the supreme court of the State of California now on file in my office.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By G. H. S. DRYDEN,
*Deputy Clerk of the Supreme Court.*

Endorsed on cover: File No. 19,949. California supreme court. Term No. 447. East Central Eureka Mining Company, James Toman, and Eliza A. Toman, plaintiffs in error, *vs.* Central Eureka Mining Company. Filed October 31st, 1905. File No. 19,949.